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AUTHOR Nolte, M. Chester; Linn, John Phillip
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ABSTRACT

Intended as background material for the annual meeting of the Education Commission of the States, this document attempts to answer basic questions inherent in teacher negotiations. The first section discusses teacher militancy, current status of legislation, and contents of teacher negotiation laws. The second section considers issues facing legislators in dealing with collective bargaining by governmental employees. Information presented on items being negotiated is from a study conducted by the National Education Association, which has some 1,540 written agreements between boards and teachers on file. Each agreement was analyzed, and a list of 150 negotiable items in 15 categories was compiled. The third section consists of a reprint of a Time Essay, "The Worker's Rights & the Public Weal." Appendix A contains 10 fact sheets covering specific topics related to collective bargaining for teachers. Appendix B consists of negotiation statutes from the States of California, Connecticut, Florida, Rhode Island, and Wisconsin. (Table III, pp. 17a-17d may be of poor quality in hard copy because of small print.) (MLF)

ED0 39628

BACKGROUND MATERIALS
ON
COLLECTIVE BARGAINING
FOR TEACHERS

Prepared for the Annual Meeting of the
Education Commission of the States
Denver, Colorado June 26-28, 1968

PART I	A Conference Guide on Collective Bargaining for Teachers (white paper)
PART II	A Model Act providing for the settlement of disputes between certified public school teachers and school governing bodies (yellow paper)
PART III	Time magazine article on "The Workers Rights and the Public Weal." (blue paper)

EA 002 696

ECS

EDUCATION COMMISSION OF THE STATES
822 Lincoln Tower, 1860 Lincoln Street
Denver, Colorado 80203 — 303 - 255-3631

ED0 39628

MEMORANDUM

TO: ECS Commissioners

FROM: Wendell H. Pierce

SUBJECT: Background Material for Annual Meeting

The attached background material for the annual meeting is comprised of three separate papers each of which is of major importance to our June meeting.

Papers included are:

1. Background materials on Collective Bargaining for Teachers--a Conference Guide;
2. An article from a recent edition of _Time_ magazine; and,
3. A piece of model legislation dealing with teacher negotiation.

The "Conference Guide" is, to the best of our knowledge, the most complete treatment of the basic questions involved in teacher negotiations currently available. We urge you to study this paper carefully in order that we might have a highly productive annual meeting.

The _Time_ article will give you some additional data about the experiences which some states have had in dealing with the issues involved in teacher strikes, sanctions, and negotiations.

The model legislation has been included in order to provide a point of departure for considering alternative courses of action which individual states might want to consider in attempting to resolve the problems resulting from increasing teacher militancy.

Please bring these materials with you to Denver since the number of additional copies which will be available is limited.

COLLECTIVE BARGAINING FOR TEACHERS

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BACKGROUND MATERIALS
ON
COLLECTIVE BARGAINING
FOR
TEACHERS

A Conference Guide

Prepared for
EDUCATION COMMISSION
OF THE STATES

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL OFFICE OF EDUCATION POSITION OR POLICY.

by
M. Chester Nolte
and
John Phillip Linn
University of Denver

Denver, Colorado

May, 1968

INTRODUCTION

In 1877, Victor Hugo observed that "greater than the tread of mighty armies is an idea whose time has come." Nearly a full century later, the quotation has special significance in viewing the quest by government employees to enter into meaningful dialogue with management in most of the states of the United States today.

The increasing tempo of strikes in the public sector of the economy high-lights all too well the "Johnny-come-lately" status of the relationship which currently exists between the various levels of state government and organizations representing governmental employees. With the possible exception of the federal service, government workers find themselves at approximately the same state of development as did the labor unions in the early '30s. The situation is not without its conflict. Although strikes by government employees are outlawed in every state and jurisdiction, no fewer than 142 work stoppages were called by public employees in 1966 alone, a figure which exceeded the four previous years combined.

Current literature on the subject is extensive but not encouraging. In a special essay on March 1, 1968, for example, Time magazine described the condition as "chaotic," and reported that "there is every indication that the situation is growing progressively worse." Editorial writers and pundits tend to agree.

Deterrents in the form of punitive laws against the strike by government employees apparently have failed. Faced by a choice between obeying the law or going on strike and suffering the penalties, government employees have opted for the strike. In New York City, where teachers won a 20% pay increase through a September strike, Albert Shanker, local union president, ruefully noted that "Perhaps it is a bad lesson to be learned, but the city has convinced us that striking brings us gains we cannot get in any other way." Similar conclusions have been reached by unions in Memphis, Detroit, Youngstown, and the State of Florida. Despite Ohio's get-tough law calling for the firing of any government employee who strikes, the state has had at least 30 strikes involving policemen, nurses, service employees and teachers in the past year.

In the Condon-Wadlin Act, the State of New York had one of the toughest anti-strike laws anywhere, but the statute was recently repealed in favor of a more moderate approach. The Taylor Act, which replaced Condon-Wadlin, is now being in turn considered for possible revision. And so the search continues for a law which will bring a balance between the need for government employees to collectively bargain with management, and the right of the public to uninterrupted governmental services.

In developing statutes to deal with the dilemma, legislators have looked hopefully to the federal service, where there has been comparative quiet since 1961. In 1962, President Kennedy issued Executive Order #10988, which formally recognized the governmental workers' right to join unions and bargain collectively with the Federal Government. Today, 45% of all federal governmental employees have exclusive representation by labor organizations under E. O. #10988, representing

1,238,748 workers in a total of 1,813 separate bargaining units. The fact that E. O. #10988 is seriously being studied to effect needed changes further removes it from the "model" classification. Under consideration by the President's Review Committee, composed of five cabinet-level officers, are the following possible revisions: 1) the feasibility of establishing a separate board to administer the Order; 2) what to do about the arbitration of impasses arising in the federal service; 3) re-examination of the three levels of recognition (exclusive, formal, and informal); 4) possible inclusion of governmental employees under the Financial Disclosure and Reporting Act; 5) examination of the status of supervisors; and 6) the question of union security beyond and in addition to dues check-off. A report from this committee is expected momentarily.

E. O. #10988, the result of a report by a special task force in 1961, stresses differences between collective bargaining in the private sector of the economy and in the public sector. Adjustments in the Order are now necessary to bring it into line with more recent thinking on the subject, which, instead of stressing differences, emphasizes similarities. Accommodation tactics now being recommended by some dozen blue-ribbon task forces throughout the country emphasize almost universally how similar collective bargaining in the public sector is to that in the private sector, a view shared, incidentally, by the labor unions.

The last unorganized frontier among workers in this country is in the public sector, and unions are making concerted efforts to rapidly organize those who do not now belong to any organization. That they are winning success in this endeavor is demonstrated by the fact that union membership nationally rose only 15% from 1956 to 1967, but during the same time it increased 60% in the field of government. Union membership among governmental workers now numbers 1,500,000 and is growing at the rate of 1,000 members every working day!

Among teachers, the activity to organize white collar workers has a special dimension: the struggle between the AFT and the National Education Association. Out of this conflict has come a rash of statutes relating to teachers' rights to bargain with their school boards. Although only fifteen of the states have enacted such legislation so far, a definite pattern is emerging. On the one hand are the union-sponsored statutes emphasizing the similarities between bargaining in the private and public sectors, while on the other are the NEA-sponsored statutes emphasizing the differences. The net result at present is that no state has enacted what might be generally accepted as a "model statute" which would serve every state at any time under any circumstance.

That governmental workers should have the right to bargain is not now convincingly denied. The next issue is that of what method shall be utilized in each state to implement this right. It is here that the enclosed materials hopefully will be of assistance to the members of the conference.

In undertaking to compile materials for the conference, we were guided first by the need for objectivity and the desire to gather all points of view on the subject at hand, and secondly, by the need for a framework within which to view the content of the field. The resulting materials, contained herein, hopefully meet both needs at the moment.

Finding an innovative solution to the problem of adaptation of an older system to present needs is a complex and sometimes frustrating task. Those who undertake legislation on a trial-and-error basis must realize that such statutes must undergo revision--perhaps many revisions--before success will crown their efforts. The key words here appear to be "pragmatism," "reasonableness," and "persistence." Whatever new legislation is promulgated must be considered only tentative until more perceptive insights come into view.

That such solutions are possible is not now in doubt; the only question remaining is what solution for what situation at what point in time. It was in anticipation of an early and lasting solution in all the states that the enclosed materials were hopefully prepared.

Denver, Colorado

May, 1968

M. Chester Nolte

John Phillip Linn

SECTION I

BACKGROUND MATERIALS ON TEACHER MILITANCY, CURRENT STATUS OF LEGISLATION, AND CONTENTS OF TEACHER NEGOTIATION LAWS

CAUSES OF TEACHER MILITANCY

As a phenomenon, teacher unrest has received extensive treatment in the literature of the day, particularly since 1963. Writings on the subject are not confined to educational journals or the popular press, but extend into the publications of political scientists, sociologists, and historians. Journals in such unrelated fields as arbitration law, business, governmental affairs, industrial relations, personnel administration, psychology, unionism and research are likewise replete with material. Some of these have dealt frequently with the subject and at considerable length. Accordingly, a variety of points of view on teacher militancy are available, ranging all the way from editorial comment to conclusions based upon study in depth.

Despite the varying points of view, substantial consensus exists on two points: 1) no one single cause alone can be said to bear full responsibility for causing teacher militancy, and 2) the causes are deep-seated, complex and inter-related to an extent which makes difficult if not impossible the task of weighing with any certainty the relative roles of each causative factor. Somewhere in between these extremes--simple v. complex causation--there lies an area where many converging lines meet and where one must look for the factors which result in this phenomenon.

The most frequently mentioned cause of teacher militancy in the literature is mediocre salaries, but there is evidence (along with protestations by teacher groups) that this factor is not so much a cause as an effect: although teaching salaries have been traditionally below the professions, they have been rising steadily since World War II, and are not so far out of line as to be the primary cause of teacher unrest. They are, however, the most visible evidence the taxpayer has with respect to the new posture on the part of teachers, hence teacher salaries are blamed for much of the unrest among teachers in this country today.

The issues are more complex than appear readily from surface examination. Other reasons given in the literature are low public image for teachers, a negligible voice in the educational policy making process, problems of student discipline, large classes, lack of administrator and board support, and the loss of personal identity through reorganization of school districts into large, impersonal systems. The case is urged for the concept that "a new breed" has come into teaching, among whom are a larger proportion of men, unwilling to accept the inferior status which women often took for granted, and who are more self-assured of their own professional competency. This latter argument is not here documented, but it can be shown that the teaching corps is indeed changing, and that younger members are more vocal and not averse to the use of more recent social protest methods to achieve their demands.

Another stated cause is that teachers want to become involved in the making of school policy with their local boards of education. This, too, may be more effect than cause: following Sputnik, a great deal was expected of the schools; teachers felt defensive and now want merely to become guarantors of their services, a possibility only if they enter into meaningful dialogue with management.

Obviously, a wider frame of reference is needed in examining causes of unrest and militancy among teachers. Such a typology is afforded by the sociologists, and it is within this framework that the treatment found in the following pages will be projected. This view holds that teacher unrest is part of a general, world-wide disaffection of the "have-not" peoples of the globe, and constitutes a major revolution ranking alongside the Reformation, the Industrial and Political Revolutions, and the Technological Revolutions in magnitude and impact upon world conditions. Such a "sociological" or "humanitarian" revolution is therefore not unique to Americans alone, nor to teachers among Americans, but extends into every corner of the world. The motto of the revolution is "rising expectations for all peoples--now." Caught up in a wave of freedom, peoples in Africa, Asia, and even in Soviet Russia are demanding their moral, if not their constitutional right, to enjoy self-determinism and the fruits of science.

Militancy. Webster's dictionary defines militancy as "combative; agressive; engaged in warfare of conflict." Root cause of militancy is alienation, which may be defined as "withdrawal or estrangement; to become indifferent." Who could imagine ten years ago that teachers would be "hitting the bricks" in 1968? Yet within the years of 1966 and 1967, more teacher strikes occurred than in all the twenty years immediately preceding 1966. (Table I)

Work stoppages are occurring in spite of the fact that strikes by public employees are everywhere outlawed in this country. The word "strike" implies a labor influence, a new frame of reference for teachers since 1960. Indeed, in their organizational activities, teacher groups have been tremendously influenced by three factors present on the social scene: 1) the successes of the union labor movement in the private sector of the economy; 2) open rivalry between the American Federation of Teachers and the National Education Association; and 3) the high visibility of the civil rights movement among minority groups in the culture. Against this backdrop, the following observations seem justified.

American labor movement. Since 1935, when the Wagner Act was passed by Congress, it has been "public policy" for workers in the private sector to bargain with management. Governmental workers, however, were entirely excluded from the provisions of the Wagner Act, and this included teachers.

Anxious to make up for lost time, all governmental workers, not just teachers alone, have been putting pressure on government to let them bargain collectively. Since the rationale is that "equals" must sit across the table from "equals," they seek to have the law changed to favor giving them more power and prestige in the collective bargaining process.

Collective bargaining became a household word following 1935, and is not unknown to the majority of teachers today. The language of labor is familiar also; by adopting the labor framework and adapting it to the need for dialogue with boards of education, teachers are in

TABLE I

NUMBER OF SCHOOL TEACHER STRIKES BY YEARS, UNITED STATES*

YEAR	NUMBER OF STRIKES BY TEACHERS
1880-1940	20
1940-1944	17
1945-1952	73
1953-1962	20
1963-1965	16
1966	33
1967	75
1968 (est)	100+

*Sources: Bureau of Labor Statistics; NEA; other sources effect adopting a proven method of the amelioration of grievances and the making of school policy. Despite the difficulties involved in adapting the collective bargaining process to negotiations between governmental workers and the government, considerable progress has been made toward the full adoption of this process as a means of entering into meaningful dialogue with boards of education.

Nor is this process likely to be abandoned. The rivalry between the AFT and the NEA has intensified the struggle, and bids fair to continue until some settlement is reached between the parties.

AFT-NEA Rivalry. It has been suggested that this warfare between the NEA and the AFT must eventually end in merger or alliance. Energy and money are wasted which might otherwise be spent on unified endeavors. Reports here are likely to be biased, so one must look to the official positions of both parties to determine the present condition of merger overtures. Charles Coggen, President of the AFT, points out the following obstacles in the way of merger of alliance:

"Item: The NEA nationally, and most of its affiliates, still admit administrators up to the top boss, the superintendent. Query: Is the classroom teacher element in the NEA ripe for the final revolt? If so, there may be some realistic basis for merger consideration.

"Item: The NEA still has racially segregated state and local affiliates, despite repeated convention resolutions calling for integration. There is, then, this continuing obstacle to AFT consideration of merger.

"Item: the NEA does not involve itself, to any significant degree, in programs of social significance. Where does the NEA stand on the crucial problems of widespread poverty; slum and ghetto school and community degredation; racism in the entire American social fabric, including the schools, and in particular our history textbooks; joblessness for millions of people, with special emphasis on the blacks and the restless youth; and so on?

"Item: The AFT will require as the sine qua non of merger an acceptance of affiliation with the labor movement. The mutual interests and proven worth of the AFL-CIO and the AFT to each other preclude any conceivable break with this affiliation. Query: Will the NEA, and more specifically its rank and file classroom teachers, ever realize the necessity of labor affiliation?" (Source: American Teacher, March, 1968).

On the other hand, the NEA, while acknowledging that collective action "has become a marked characteristic of the whole American society," nevertheless eschews as "unprofessional" the involvement of teachers and administrators in the labor movement. In 1967, for example, at its annual convention, the NEA adopted a lengthy resolution which contained among other things the following statements of position:

> The National Education Association insists on the right of professional associations, through democratically selected representatives using professional channels, to participate with boards of education in the formulation of policies of common concern, including salary and other conditions of professional service.
>
> Recognizing the legal authority of the board of education, the

administrative function of the superintendent, and the competencies of other professional personnel, the National Education Association believes that matters of mutual concern should be viewed as a joint responsibility. The cooperative development of policies is a professional approach which recognizes that the superintendent has a major reponsibility to both the teaching staff and school board. It further recognizes that the school board, the superintendent or administration, and the teaching staff have significantly different contributions to make in the development of educational policies and procedures.

The Association believes that procedures should be established which provide for an orderly method of reaching mutually satisfactory agreements and that these procedures should include provisions for appeal through designated educational channels when agreement cannot be reached. (Source: 1967 NEA Resolutions, Washington: 1967).

Conclusion: Possible merger or alliance between the AFT and the NEA is presently largely speculative, and leaves unanswered the question of what the effect may be on existing and yet to be promulgated bargaining legislation.

The civil rights movement. Schools provide the setting where much of the social change in our time occurs. Huxley pointed out that "new truths begin as heresies, and end as superstitions;" the quotation is apt for today's schools. Because they touch all the children of all the people, public schools are at the center of social turmoil. The 1950's saw debate on the question,"who shall be educated,"with the answer being all those who can profit from the educational process. Universal education as a public policy, however, brought problems, not the least of which was that of quality and the financing of education at a level which would achieve a quality education for every child. The problem of the sixties has been how to provide universal educational opportunity with a maximum amount of quality at the same time. When you add social innovation along the lines of the relationship between church and state, desegregation of the schools, and the attainment of civil rights the stage is set for upheaval and unrest. In a sense, teachers, by emphasizing conditions in the schools, are reminding society of its commitment, a commitment which they must declare in order to be "professional." While it involves their own status, the "professional" teachers, in calling the attention of the country to the need for more adequate schools, maintain they are doing only what any profession should do--decry conditions detrimental to adequate realization of the birthright of every child to attain an adequate education. Of course, some members of the profession are more interested in their own welfare than that of the children, but to say that the same is true of all teachers would be to beg the question. Perhaps it is not a question of "either-or" but of "both"--quality schools and a living wage for teachers, and conditions under which they may be expected to fulfill their part of the commitment to America's youth.

The question of quality education brings up glaring inadequacies in the financing of education in this country.

Financial issues in education. There is sufficient consensus on the need for a change in financing public education to mention it at this point. Increasing taxpayer resistance to new and mounting taxes often place school officials at odds with their constituency. Competition for the tax dollar grows more acute with each passing year, and requires teachers to form their own financial lobbies in self-defense. Groups of teachers maintain that they must be either politically active or organizationally strong enough to compete for the tax dollar at its source. An argument is advanced that such activity is not expected of teacher groups, that the acquisition of money is the task of boards of education and school administrators. Nevertheless, many teacher groups today are in a running battle with their home legislatures on the question of more adequate school financing. The Utah, Oklahoma, and Florida situations, as well as those of many other states, are indicative of the place which the competition for the tax dollar has in the whole spectrum of teacher militancy.

Changes in school organization. School districts as systems have undergone radical changes; in one generation, the number of these districts fell from 130,000 to near 25,000. The gulf between the management level where decisions are made to the teacher in the classroom has widened, making communications difficult. The teaching task itself has become immensely more difficult--more to be taught, more children to be served, more non-teaching duties introduced. In some cities, teachers have felt a need for protection from physical attacks and violence in the classroom. The inability of some cities (which depend upon the city for financial support) to raise money and control the school program has added to teacher frustration.

Teaching has been transformed, and new roles for professional personnel introduced. The old loyalties are no longer pertinent, nor even appropriate, nor is social protest the bugaboo it once was. The crisis in the schools affords a background for insistence by teachers that they need to be "in" on the making of policy with their boards of education. They insist on a greater hand in the decision making process.

Professional change. There is some evidence that teaching, among the professions, is becoming more mature: there is more self-assurance among practitioners, more organizational strength, and a more pragmatic world view. A notable change in the attitude of teachers towards the "paternalism" of some administrators is also cited as evidence of a mounting maturity. Within the labor union concept, administrators and supervisors are management, hence on the other side of the table. Alienated from his former colleagues, in a strange setting, today's teacher turns inward and finds support and understanding among others in his organization. Since much of our lives are influenced by organizational ties, the teacher looks to his organization to provide the things he needs and feels that he cannot achieve as a lone individual.

The evidence is quite convincing that collective negotiations between boards and teachers is here to stay. The forces at work in the world and in the nation are not apt to disappear until things are brought into balance between teachers and school managers. The trend in most states is to examine just how this balance may be achieved within the framework of state law. This process could take some time to complete. In the words of a recent Saturday Review article, "Any realistic appraisal of teacher militancy today seems to indicate that we have seen only the beginning."

CURRENT STATUS OF LEGISLATION

Fifteen of the fifty states have enacted legislation either permitting or mandating the right to meet and confer or the right to bargain collectively between teachers and boards of education. A sixteenth, New Jersey, has, by resolution of the state board of education, required local boards of education to formulate and adopt written policies setting forth the procedure to be followed for the presentation, consideration, and resolution of grievances and proposals of its employees. Thus, as of April 1, 1968, sixteen of the states have either dealt with teachers separately or all governmental employees including teachers in some formal way with respect to collective bargaining. (See Table II)

The sixteen states were identified as Alaska, California, Connecticut, Florida, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Texas, Washington and Wisconsin. Earliest legislation on this subject was enacted in Wisconsin in 1959, and amended in 1961. (See Table III)

A few other states permit teachers to organize: Illinois, by court decision; Indiana, by law; and Kentucky, by opinion of the attorney general. However, these cannot be considered with the other sixteen included in Table III, because they hardly go further than the right to organize. A few states (Missouri: all governmental employees except police and teachers; Vermont: city employees except "Professionals") actually deny teachers the right to organize or to bargain with their local boards of education.

TABLE I I I

STATE STATUTORY PROVISIONS IN SIXTEEN STATES HAVING LEGISLATION COVERING NEGOTIATIONS BETWEEN TEACHERS AND THEIR EMPLOYERS

(As of April 1, 1968)

YEAR	STATE	COVERAGE	BARGAINING UNIT DETERMINED BY	TYPE OF REPRESENTATION	REPRESENTATION DETERMINED BY	ADMINISTRATIVE AGENCY FOR UNIT DETERMINATION & ELECTIONS	CONTAINS SPECIFIC UNFAIR LABOR PRACTICES
1962	ALASKA	All State Employees	. . . .	. . . .	No enforcement by courts unless union registered with department of labor and complied with all regulations		No
1965	CALIFORNIA	All certified public school employees and all public employees	. . . .	Proportional	Examination of membership list	. . . .	Yes
1965 & 1967	CONNECTICUT	Certificated professional employees of local boards of education below rank of superintendent	Secretary, State Board of Education	Exclusive	Majority referendum	Ad hoc impartial board of arbitration	Yes
1965	FLORIDA	Certificated personnel representing all work levels of such instructional and administrative personnel as defined in the school code	County Board of Education	Exclusive permitted	County Board of Education may appoint or recognize existing committees	County Board of Education	No
1965	MASSACHUSETTS	All city and county employees except police, elected officials & executives of government	Massachusetts Labor Relations Commission	Exclusive	Majority election by secret ballot or other suitable means	Massachusetts Labor Relations Commission	Yes
1965	MICHIGAN	All public employees except civil service employees of the state of Michigan	Michigan Labor Mediation Board	Exclusive	Majority election	Michigan Labor Mediation Board	Yes

(TABLE III Continued)

YEAR	STATE	SPECIFIC BARGAINABLE ISSUES	AGREEMENT IN WRITING?	IMPASSE BROKEN BY	METHOD OF SELECTING IMPASSE BREAKER	STRIKES
1962	ALASKA	Grievances, terms, or conditions of employment or other mutual aid or protection in connection with employees	Permitted but not mandated	No specific procedure provided	. . . .	Not mentioned
1965	CALIFORNIA	Employment conditions & employer-employee relations, but not limited to wages, hours & conditions of work	Not mentioned	No provision specified	No provision	Not mentioned
1965 & 1967	CONNECTICUT	Salaries, and other conditions of work	If requested by either party	Mediation by secretary, State Board of Education; arbitration by 3-person board	Each party to dispute selects one arbitrator, who in turn selects third. Tied to budget submission date	Prohibited
1965	FLORIDA	To resolve problems or reach agreements affecting certificated personnel	Not prohibited	No specific provision	. . . .	Not mentioned
1965	MASSACHUSETTS	Wages, hours & other conditions of employment	Yes	Fact-finding	Mutual selection of fact finding from list of 3 proposed by Board of Conciliation & Arbitration;if fail to select in 5 days, said Board selects	Prohibited
1965	MICHIGAN	Rates of pay, wages, hours of employment and other conditions of employment	Yes, if requested by either party	Ad hoc advisory arbitration	Each party chooses one member;these two then choose a third. If parties fail to agree, MLMB selects third person	Prohibited (strike is defined)

(TABLE III Continued)

YEAR	STATE	COVERAGE	BARGAINING UNIT DETERMINED BY	TYPE OF REPRESENTATION	REPRESENTATION DETERMINED BY	ADMINISTRATIVE AGENCY FOR UNIT DETERMINATION & ELECTIONS	CONTAINS SPECIFIC UNFAIR LABOR PRACTICES
1967	MINNESOTA	All certificated personnel except the superintendent	Local Board of Education	Exclusive where only one organization represented	When more than one organization, a teachers' council of 5 members on proportionate basis determined by membership in each organization	Local Board of Education	Yes
1967	NEBRASKA	All certificated personnel in Class III, IV, & V school districts	Majority of local board must so resolve	Exclusive permitted	Membership list of majority of certificated personnel	Local Board of Education	Good faith required
1966	NEW HAMPSHIRE	New Hampshire Revised Statutes Annotated, Title III, sec. 31. 3 - "In General. Towns may purchase and hold real and personal estate for the public uses of the inhabitants, and may sell and convey the same; may recognize unions of employees and make and enter into collective bargaining contracts with such unions; and may make any contracts which may be necessary and convenient for the transaction of the public business of the town."					
1966	NEW JERSEY	Each local public school board of education, by resolution of the state board of education, is required to formulate and adopt written policies setting forth the procedure to be followed for the presentation, consideration, and resolution of grievances and proposals of its employees and file a copy with the State Board not later than July 1, 1966.					
1967	NEW YORK	All public employees except organized militia	Public Employment Relations Board	Exclusive permitted	PERB determination that organization represents group of public employees it claims to represent, & it rejects right to strike	Public Employment Relations Board	Yes

(TABLE III Continued)

YEAR	STATE	SPECIFIC BARGAINABLE ISSUES	AGREEMENT IN WRITING ?	IMPASSE BROKEN BY	METHOD OF SELECTING IMPASSE BREAKER	STRIKES
1967	MINNESOTA	Conditions of professional service, education & professional policies, relationships, grievance procedures, & other matters as applied to teachers	Yes, in form of resolution or by direction to any administrative officer as may be appropriate	Adjustment panel of 3 members	Each party chooses 1 person who in turn choose a third. If unable to agree, presiding judge of district court shall appoint third member	Not mentioned
1967	NEBRASKA	All matters of employment relations	Yes	Fact finding	Each party chooses 1 person; these 2 choose a third. If parties fail to agree, they request list from Nebraska State Dept. of Education	Strikers may have certificate suspended for one year
1966	NEW HAMPSHIRE	(Complete information on previous page)				
1966	NEW JERSEY	(Complete information on previous page)				
1967	NEW YORK	Terms and conditions of employment, and administration of grievances arising under terms of employment	Yes	1)Mediation (PERB) 2)Fact finding by board appointed by PERB 3)Chief executive officer submits findings to legislative body involved	On request of either party, or on motion of PERB	Prohibited and penalties assessed in case of strike

(TABLE III Continued)

YEAR	STATE	COVERAGE	BARGAINING UNIT DETERMINED BY	TYPE OF REPRESENTATION	REPRESENTATION DETERMINED BY	ADMINISTRATIVE AGENCY FOR UNIT DETERMINATION & ELECTIONS	CONTAINS SPECIFIC UNFAIR LABOR PRACTICES
1965	OREGON	Certificated school personnel below the rank of superintendent	Local School Board	Exclusive	Majority election	Local School Board	No
1966	RHODE ISLAND	Certified public school teachers, superintendents, assistant superintendents, principals & assistant principals excluded	State Labor Relations Board	Exclusive	Majority election by secret ballot	Unit determined by statute. Election conducted by State Labor Relations Board	Yes, must meet and confer
1967	TEXAS	All teachers	Local Board but may not recognize labor organizations	Exclusive	Law prohibits representation by an organization which claims right to strike	Local Board	Against public policy to enter into c. b. agreements with labor unions
1965	WASHINGTON	All certified public school employees except superintendent	. . . .	Exclusive	Majority election by secret ballot	. . . .	No
1959 & 1961	WISCONSIN	All municipal employees including public school teachers, except policemen, sheriff duties and county traffic officers	Wisconsin Employment Relations Board	Exclusive	Majority election	Wisconsin Employment Relations Board	Yes

(TABLE III Continued)

YEAR	STATE	SPECIFIC BARGAINABLE ISSUES	AGREEMENT IN WRITING?	IMPASSE BROKEN BY	METHOD OF SELECTING IMPASSE BREAKER	STRIKES
1965	OREGON	Matters of salaries & related economic policies affecting professional services	. . . .	Advisory Arbitration	Board of employees may request appointment of consultants;Board chooses l; employees l; they in turn choose third	Not mentioned
1966	RHODE ISLAND	Hours, salaries, working conditions and other terms of professional employment	Yes	Arbitration binding on all matters not involving expenditure of money	Each party selects one member to tripartite panel;two thus chosen select third. If parties fail, them American Arbitration Association appoints third member or other methods	Prohibited
1967	TEXAS	Board may consult with teachers on matters of educational policy & conditions of employment(but not required)	Not prohibited	. . . .	. . . .	Prohibited
1965	WASHINGTON	Proposed school policies relating but not limited to a wide range of listed issues	. . . .	Advisory arbitration	District Board selects one member;teachers, one; these two select third	Not mentioned
1959 & 1961	WISCONSIN	Wages, hours and conditions of employment	Yes, mandated	Fact finding	Appointed by WERB from list kept by it, or three member panel when jointly requested by both parties	Prohibited

(TABLE III Continued)

	COVERAGE	BARGAINING UNIT DETERMINED BY	TYPE OF REPRESENTATION	REPRESENTATION DETERMINED BY	ADMINISTRATIVE AGENCY FOR UNIT DETERMINATION & ELECTIONS	CONTAINS SPECIFIC UNFAIR LABOR PRACTICES
STATES - 16						
1959-1 1961-1 (revision) 1962-1 1965-7 1966-3	States where all Government employees are covered-7	County Board of Education, Local Board of Education or town-7	Exclusive either permitted or mandated-14	Majority election-7 Membership list-3	Local or County School Board or town-9 State PERB-5	Yes-10 No-6
1967-5 (1 revision)	States where certificated personnel only are covered-9	State Board of Education-1 State Labor Relations Board -5	Proportional-1 Not specified-1	County or Local School Board-2 State PERB-1 Unspecified 3	Unspecified-2	

(TABLE III Continued)

	SPECIFIC BARGAINABLE ISSUES	AGREEMENT IN WRITING	IMPASSE BROKEN BY	METHOD OF SELECTING IMPASSE BREAKER	STRIKES
STATES-16					
1959-1 1961-1 (revision) 1962-1 1965-7 1966-3 1967-5 (1 revision)	Tendency towards full range of policy making in addition to wages, hours, & conditions of work	Yes-11 No-0 Not mentioned-5	No specific provision-6 Fact finding-3 Advisory Arbitration-3 Mediation-1 Binding arbitration on all matters not invol Combination of plans-1 Adjustment panel-1	Most commonly:Each party selects one member to panel; these two then choose third. If they fail to agree, some state agency is called in to name third member of panel	Prohibited-8 Not mentioned-8

TABLE II

LEGISLATION PERMITTING OR MANDATING THE RIGHT TO MEET AND CONFER A BARGAIN COLLECTIVELY BETWEEN TEACHERS AND BOARDS OF EDUCATION BY STATES

	Right to Meet & Confer		Right to Bargain Collectively	
	Permissive	Mandatory	Permissive	Mandatory
Alaska			X	
California		X		
Connecticut				X
Florida	X			
Massachusetts				X
Michigan				X
Minnesota		X		
Nebraska	X			
New Hampshire	X			
New Jersey		X		
New York				X
Oregon		X		
Rhode Island				X
Texas	X			
Washington		X		
Wisconsin				X

On March 23, 1968, the Maryland legislature passed a negotiations statute, which now awaits the Governor's signature. If signed, the bill will become law on June 1, 1968.

Coverage of the new legislation extends to school personnel exclusively; it specifically covers certificated personnel and excludes only superintendents and persons designated to act for school boards in a negotiations capacity. A group which holds less than majority membership, but at least 30% of the potential as members, may request that an election be held, whether or not a competing group is available to go on the ballot. Such an election is designed to offer teachers a choice between having the existing organization serve as its negotiation representative or having no representation at all. Election contests will be held where a group in competition with the majority organization can show proof of having at least 10% membership strength.

The law prohibits strikes and spells out strict penalties. However, arbitration is provided for, and designated as the means of solving impasses. The law contains a timetable geared to the adoption of school budgets; it will be too late this year under this timetable for negotiations to take place, since all negotiations must take place before June 15th annually.

On March 20, as the Ohio legislature moved to adjourn, a teacher negotiation bill failed to pass for lack of one vote in the Senate; 17 votes were needed; two senators were absent; the vote was 16 v. 15.

Similarly, in Kentucky, although it passed the House by more than a 6 to 1 majority, a bill to permit negotiations between teachers and boards of education died in the Senate Committee for lack of one vote.

Greatest activity in legislation relating to teachers was in 1965, when seven states enacted such statutes. Three other states followed suit in 1966, while another four did so in 1967, and there was one revision in 1967, that of Connecticut.

Coverage. Of the Sixteen states formally recognizing governmental employees' right to bargain, nine limited application of the statute to certificated personnel only, to the exclusion of other occupational groups. The other seven states covered all governmental employees, with some minor exceptions, such as policemen, firemen, elected officials, and executives of government. Thus, there were slightly more of the states which favored the concept that certificated personnel should be covered under separate legislation than those which favored the concept of a comprehensive law.

Those states in which all governmental employees including teachers (with appropriate exceptions) were included were: Alaska, California, Massachusetts, Michigan, New Hampshire, New York and Wisconsin. Those states having separate legislation covering certificated personnel only were: Connecticut, Florida, Minnesota, Nebraska, New Jersey, Oregon, Rhode Island, Texas and Washington. An examination of these lists revealed no geographical causation, since the states in each list were widely distributed. Nor is the determination related to whether the state is an industrial state. Rather, how the determination of the question of coverage was made in each state was not readily apparent from the analysis of the data available in the study.

Of the nine states having separate legislation for public school personnel, five specifically exclude superintendents, one excludes all administrators, and three combine and unify all certificated staff members in the negotiations process. In the other seven states, in which all governmental employees are covered, evidence was not clear whether separate bargaining units for teachers and administrators are either permitted or required.

Method of determining bargaining unit. The most common practice among the sixteen states for determination of the local bargaining unit or units is for the local or county board of education to make this determination. Seven of the sixteen states use this method. In five states, the labor relations board makes the determination. In one state, Connecticut, the state department of education is charged with this responsibility, while in the three remaining states, there is no specified method of determining the local unit of bargaining.

The Connecticut statute for school personnel is unique in that it provides for local determination of the bargaining unit. Prior to voting for who shall represent certificated personnel, a notice must be posted on each bulletin board for teachers in every school in the school district, or if there is no bulletin board, to give a copy of such information to each employee. A vote is then held to determine whether the staff wishes to negotiate through a single, all-inclusive organization, or through separate units composed of classroom teachers, on the one hand, and administrative-supervisory personnel on the other. An adverse vote by either group automatically means that the two groups will negotiate independently.

Exclusivity. Exclusive representation was described in the Wagner Act of 1935 and in subsequent amendments to the national labor law. States are slow to come to the idea of exclusive recognition for school employees, particularly since some statutory methods already exist for grievance handling; hence, any agreement which contains exclusive bargaining rights for one employee group may come into conflict with the state mandate. The rivalry between the AFT and the NEA has also confused boards of education about who should speak for teachers in a school system. But this problem has been solved in the private sector by providing that the NLRB may order an election upon the application by petition of 30% of the employees of an appropriate bargaining unit.

Fourteen of the sixteen states either permit or require exclusive representation by the certified unit. California and Minnesota are unique in that their statutes provide for proportional representation on a "teachers' council," membership on which is proportionate with the membership strength of each organization in a local district. Another state's law does not specify exclusivity, but it also does not prohibit it. Thus, the predominately accepted method is exclusivity in those sixteen states which have dealt with this problem in a formal way.

Determination of representation. Majority election is the most common (seven states) method of determining unit representation throughout the sixteen states. Three states rely on membership lists, while two leave such determination of unit to county or local school boards. In one state, the public employees relations board makes the determination, while in three the law did not specify how this was to be done. In the states in which the majority election was either permitted or mandated, a secret ballot election is the most common method in use for determination of the bargaining unit representation. When the paragraph above on exclusivity is considered alongside this paragraph, it would appear that most states provide exclusive representation to teachers based on a majority election at which the secret ballot is used.

Administrative agency for unit determination and holding elections. In nine of the sixteen states, the local or county board or the town council is the administrative agency charged in the law with unit determination and the holding of elections. In five states, the public employee relations board or a similar state agency, is charged with this responsibility. In two of the states, the law does not specify how this problem is to be handled. One might assume, however, that in the absence of such a specification, the local or county board of education would legally make this determination.

Unfair labor practices. Ten of the states have specified what is meant by unfair labor practices, while six do not. Texas law specifies that it is against public policy for the board to enter into collective bargaining agreements with "labor" unions, and the same law prohibits representation by an organization which claims the right to strike.

Similarly, in Alaska, no union or other organization can represent teachers unless it has registered with the department of labor of the state and complied with all state regulations pertaining to collective bargaining. The Alaska law does not mention unfair labor practices, nor does it specifically prohibit the strike by public employees, although it is possible that these might be among the regulations of the state's department of labor.

The New Hampshire statute is unique in that it gives towns as public corporations the power to enter into collective bargaining agreements with unions of employees, but there the statute leaves local municipal officials to their own devices. But the statute does not constitute a recognition of the right of public employees to strike (Manchester v. Manchester Teachers' Guild, 100 N. H. 507, 131 A.2d 59, 1957). Said the Court:

> There is no doubt that the Legislature is free to provide by statute that public employees may enforce their right to collective bargaining or strike. . . . Absent such legislation the collective action of the school teachers in refusing to work for the city in order to obtain salary advances even though executed in a reasonable manner was subordinate to the right enjoyed by the city against a strike by its employees. It was therefore illegal and properly enjoined. . . . The injunction restrained the concerted action of the defendants and did not in any way impose on any individual an obligation to work against his will.

To the same effect have been other cases in a wide variety of the states; it seems to be common law that public employees do not have the right to strike in the absence of a specific statute giving them this right. It could thus be argued that the strike is outlawed in all of the states, regardless of whether or not the legislature has taken action to clarify this as an unfair labor practice.

Bargainable issues. What is the usual extent of the issues which are considered bargainable among the states having specific legislation allowing teachers to bargain with local boards of education? The statutes in these fifteen states go beyond the normal scope of "wages, hours, and conditions of work," and allow certificated personnel to deal with their boards on such matters as grievances, curricula, selection of textbooks, in-service training, student teaching programs, personnel deployment, hiring and assignment practices, leaves of absence, non-instructional duties, extra pay for extra work, and a host of other issues. Some states specify clearly, while others only imply what is to be included among the issues which are considered bargainable, but it is clear that the intent of the legislatures was not to confine these issues to those of an economic nature alone. The California law, in addition to the usual issues related to employee-employer relationships, permits boards and teachers to meet and confer on "matters relating to the definition of educational objectives, determination of the content of courses and curricula, selection of textbooks, and other aspects of the instructional program to the extent that such matters are within the discretion of the public school employer or governing board under the law." This observation among the states tends to bear out the contention that teachers are fully as interested in being "in" on the decision making process as they are to obtain economic gains for themselves through the bargaining process.

Florida law provides that bargainable issues shall include "resolution of problems and the reaching of agreements affecting certificated personnel" in the public schools. Minnesota uses the word "professional" in referring to teachers and their services, and several other states likewise specifically mention teaching "as a profession." New York law, which covers all public employees, lists as negotiable issues "terms and conditions of employment," and "administration of grievances arising under terms of employment." Some intention of the legislatures is to be gleaned from reading of the preambles to these acts, particularly in those states having a single statute covering teachers' right to bargain.

Written agreements. Eleven of the sixteen states permit or require that the agreement between the parties be reduced to writing, and none of them prohibit such a practice. In five, however, there is no specific mention of whether the agreement shall be reduced to writing, leaving the impression that such a practice would be for the discretion of the local or county board of education, or the town officials. The majority position on this question is that written agreements between the parties are strongly encouraged, and at least not prohibited in a majority of the states.

Impasse. No specific provision is given for the breaking of an impasse between the parties in six of the sixteen states, while fact-finding is mentioned in 3. advisory arbitration in another 3, mediation in 1, binding arbitration on all matters not involving the expenditure of money in another one, and adjustment panels in 1, and a combination of all three plans in the last state. Thus, the picture on breaking of an impasse between the parties is unclear, a variety of solutions being offered. The most common method of selecting impasse breakers is for each party to select one member for an impasse panel, and these two in turn select the third. If after a specified length of time the two earlier members have not been able to agree, some state agency or other neutral party is called in to name the third member of the panel.

Strikes. Some mention was made above on strikes. It is a common law principle that teachers and other governmental employees do not have the right to strike absent a specific grant of power. As shown in Table III, strikes by public employees including teachers are specifically prohibited by eight of the states, while strikes are not mentioned in the other eight.

Michigan law specifically defines a striker as "one who without the lawful approval of a superior willfully absents himself from his position, or abstains in while or in part from the full, faithful and proper performance of his duties for the purpose of inducing, influencing, or coercing a change in the conditions of his compensation, or the rights, privileges or obligations of employment shall be deemed to be on strike." The person on request shall be entitled to a determination as to whether he did violate the provisions of the act. The new Taylor Act in New York contains penalties to be assessed against those who go on strike, and in Nebraska, the law specifies that strikers may have their certificates suspended for one year.

In general, punitive or restrictive laws against the strike by public employees have been ineffective. The Condon-Wadlin Act, enacted in New York in 1947, was finally replaced by the present Taylor Act which although prohibiting strikes by governmental employees, uses a different approach in assessing penalties against those who strike against the State of New York.

SECTION II

ISSUES FACING LEGISLATORS IN DEALING WITH GOVERNMENTAL EMPLOYEE RELATIONS

BASIC QUESTIONS FACED BY LEGISLATORS

In Section I, we have dealt with the probable causes of teacher militancy, the current status of legislation, and the contents of teacher negotiation laws in this country. Two patterns were noted among the laws currently in force which deal with government employees' right to bargain with the government: 1) statutes covering all governmental employees patterned after industrial legislation, and 2) statutes covering certificated personnel only, and emphasizing differences between teachers and other governmental employees. In this section, we will deal with the problems which face governors, legislators, and civil service administrators in the consideration of a collective bargaining law for any state.

The first question, obviously, is whether a state needs a statute either permitting or mandating some form of recognition for governmental employees. This question has been long debated, but the trend is continuing support for the idea in principle. Considerable negotiation is currently being carried on even in those states which have no law governing such a practice, but it is generally held that the legislature has the right to promulgate such a law if it so desires. In the absence of such a law, it is not well settled whether boards of education and other state subdivisions have such a power. Hence, one question which would be settled if a statute of this nature were passed is to legalize the practice which is now only *de facto* at best.

The following questions and issues seem pertinent to the legislature which may be considering a collective bargaining law for adoption in the state.

1. Is a state statute permitting or mandating some form of recognition for governmental employees necessary and/or desirable?
2. Who shall be covered if such a law is thought necessary and/or desirable?
    - a. Is a single law covering only teachers desirable or is a comprehensive law covering all governmental employees needed?
    - b. What possible conflict may be anticipated between the new system and existing civil service or merit system?
    - c. Should the coverage be made permissive or mandatory?
    - d. What questions of representation are important?
        1. Should representation be exclusive, proportional, or other?
        2. What method of determining representation shall be adopted?
        3. How shall appropriate bargaining units be determined?
        4. What union (or organizational) security need be given?
            - A. Union shop or agency shop?
            - B. Dues check-off?
3. What is negotiable?
    - a. Wages, hours and conditions of work (shall a definition be given, or only illustrative subjects listed?)
    - b. Policy decisions affecting the management of government (shall a definition be given, or only illustrative subjects listed?)
4. How shall impasses between the parties be handled? (Self-help v. outside help)

a. Conciliation and mediation

b. Fact-finding, with or without recommendations

c. Arbitration, grievance and compulsory
    1. Advisory
    2. Binding

d. Right to strike (only during certain times; only in relation to a budgetary approval date; not at all; penalties for the strike?)

5. What organization, if any, is needed to administer the law?

    a. Representational duties

    b. Elections

    c. Mediation

    d. Assistance in selecting fact finder

    e. Arbitration

    f. Determine unfair labor practices

    g. Enforcement?

The problem.

Today the legislatures of most of the states either have under consideration, or will soon be called upon to consider appropriate legislation providing collective bargaining rights to governmental employees. In considering such legislation, the legislators will face among others the following four basic questions:

1) Who shall be covered?

2) What is negotiable?

3) How shall impasses between the parties be resolved?

4) What organizational structure is necessary to administer the law?

Each of these four basic questions will be treated here in turn, and varying points of view given in those instances in which options are available.

Who shall be covered?

The problem of coverage is not as simple as it may appear at first glance. The choice is between a single statute covering certificated public school employees only, or one which encompasses all governmental employees of the state including teachers. Whatever choice is made carries with it an implied commitment to a basic principle, i.e., when a single statute covering certificated personnel only is adopted, there is a philosophy undergirding this decision. Similarly, when the choice is a comprehensive statute covering all governmental employees, a philosophy is likewise adopted in principle.

An examination of the underlying reasons for a single or a comprehensive statute in this area will be undertaken in the following paragraphs.

Separate legislation for teachers?

Whether separate legislation should be enacted covering certified personnel only in contrast with statutes covering all governmental employees in the state has not been widely discussed in the literature. We have noted in another portion of this report that there now exist nine states having separate legislation for teachers (ten when the Maryland law is considered), and seven in which the statutes cover all government employees, including teachers.

Characteristics of separate statutes. Where coverage is limited to certificated personnel, the chief school officer is usually exempted in each district; there is use of educational or *ad hoc* agencies or committees for unit determination, election procedures, and impasse breaking; these also stipulate or imply that the subject matter of bargaining shall include such non-work conditions as curriculum revision, textbook selection, in-service training rules, and student teacher control.

Characteristics of general coverage statutes. Teachers are covered along with other groups of public employees; the statute utilizes state labor boards to determine bargaining units, establish election procedures, and initiate procedures for resolving impasses; there is more likely to be a statement of unfair labor practices contained in the act; and penalties may be listed for violations of the terms of the statute.

Reasons for adoption of a statute covering teachers only. The following reasons for single statutes covering certificated personnel were gathered from several sources:

1. The employee relationship in public education is significantly different from that of other types of public employment to warrant separate treatment in the law.

2. Teachers have a unique function in our society and a unique employment arrangement.

3. They are, or aspire to be, professionals with entry requirements based on a long period of preparation and state licensing procedures.

4. The role of the teacher at the work place should be autonomous and in line with his professional competency.

5. The influence that the teacher has or hopes to have in setting broad policy objectives is vastly different from that played by most other public employees.

6. Fear that legislation establishing bargaining in public employment cannot help but reflect the interest of the largest classification of covered employees. A law which suits the purpose of this labor oriented group is not necessarily one that can conform to the rather

unique arrangements characteristic of public school teaching.

7. If the gains which the teaching profession has built up over the years are to be preserved, the uniqueness of the educational enterprise must be realized.

8. School boards have unique powers; most of them have separate budget and taxing powers.

9. The relationship between teachers and administrators is unique and requires that supervisors and middle management not be excluded from teacher bargaining units, as would be expected under labor relations statutes.

10. There is a community of interest between salary schedules of teachers and those of supervisory personnel.

11. If teaching is to improve, and teachers improve themselves, there must be freedom to experiment, innovate, and autonomously and freely grow and be refreshed professionally. This requires some control over the management of the schools.

12. The American public has far better teachers than it deserves. Should teachers wait until the public is ready for change or should the profession seek change in an active manner through state statutory authority, not waiting for other governmental employees to join them?

Reasons for not having a separate statute for teachers alone: The following reasons were gathered from several sources.

1. Teachers are not actually paid as "professionals," hence should not seek separate legislation on this basis.

2. Collective bargaining and professional negotiations are not essentially different; they are just different terms for the same thing.

3. AFT and NEA both want to bargain outside the limitations of the traditional scope of collective bargaining on all matters affecting the life of the teacher in the classroom.

4. Strikes are not unique to teachers alone so should not justify establishing special procedures for dealing with teacher-school board relationships.

5. A strike by teachers hardly poses any greater threat to public health or safety than a strike by policemen, firemen, nurses, hospital attendants, or public utility employees.

6. The way of settling some conflicts in education is to forbid the affiliation of supervisors in any bargaining unit which they supervise; the separate statute may lump all certificated personnel below the rank of superintendent together.

7. The problem of supervisory personnel membership is not unique to teaching alone, as witness police, firemen, nurses and the like.

8. Individuals familiar with the Wisconsin statute were not convinced that the assignment of labor relations function over education to a state labor relations agency had been a mistake.

9. Qualifications of the personnel administering the statute were far more important than the administrative machinery established to carry out the objectives of the statute.

10. Sometime having an educational agency administer an act may prove self-defeating, since some who judge are not in a position to exercise independent judgment.

11. There is greater economy in the administration of a single act; uniformity of policy is desirable; consistency in interpretation is assured.

Points of view. With respect to the adoption of a single law of a comprehensive statute, the following sources favor the adoption of the latter:

Report of Task Force on State and Local Government Labor Relations, National Governors' Conference, 1967

In general, the arguments in favor of a single collective bargaining law covering both employees of states and those in its political subdivisions seem to outweigh the reasons for separate laws. In cases where separate treatment of local government appears advantageous, a statutory provision for local option may be desirable.

Although arguments can be advanced for separate treatment of various employee categories, especially professional groups, it is generally held that regardless of the nature of the work performed, basic, uniform employee relations principles must prevail. If special treatment for some groups is necessary, it can be provided within a single administrative law and a single administrative structure.

State of Illinois. Governor's Advisory Commission on Labor-Management Policy for Public Employees, March 1967

Recommendation #2. The statute should cover all governmental bodies including the state government, municipalities, counties, school districts, and special districts and authorities, but excluding the federal government and its agencies. The statute should be appropriately integrated with existing legislation applicable to collective negotiations covering specific groups of public employees.

Recommendation #3. The statute should cover all public employees except elected officials, the heads of departments and agencies, the members of boards and commissions, managerial employees, magistrates, individuals acting as negotiating representatives for employing authorities, the immediate personal or confidential assistants and aides of the foregoing persons, and supervisors.

State of Michigan. Report to Governor Romney, February 15, 1967.

(In recommendations concerning the present Michigan public employees bargaining law.) A provision should be added dealing specifically with the status of supervisory employees. . . .A provision should be added prohibiting the representation of police officers by any labor organization which represents or is affiliated with any labor organization which represents, or might lawfully at any time seek to represent, public employees other than policemen (or combined policemen and firemen.). . . This is to insure that persons charged with law enforcement responsibility will not become involved in "conflict of interest" or divided loyalty situations.

On the other hand, the following sources make a case for a single law for teacher negotiations:

T. M. Stinnett. Turmoil in Teaching, 1968, p. 118, NEA Point of View

Why was the legal right of teachers to negotiate demanded in the resolution? It may be surmised that this arose from two considerations: First that the process already in operation informally in many school districts needed only to be formalized and adopted by local boards to make it legal. Second, that the impact of the New York City situation and the inroads of labor-sponsored legislation forced teachers into the labor machinery to some degree in at least three states. These, plus the threat of still further inroads of such legislation as a part of the announced drive by labor to organize teachers, forced the NEA and the state associations to advocate legal means of keeping negotiations within educational channels.

There were other consideration: If teachers were to renounce the strike there had to be legal recognition of their right to negotiate. Moreover, there had to be legal recourse when an impasse with a school board developed. . . .Laws in some of the "labor" states pushed teachers farther into labor procedures.

State of Oregon. An Act Relating to Working Conditions Between Boards of Education and the Teaching Profession, Ch. 390 of 1965

Section 1. The Legislative Assembly, recognizing that teaching is a profession, declares that in matters arising between district school boards and certificated school personnel with reference to professional services rendered or to be rendered by such personnel, it is in the best interest of public education in this state to establish a procedure for the orderly, equitable and expeditious resolution of such matters.

State of Nebraska. An Act Relating to Schools, 1967

Section 1. In order to promote the growth and development of education in Nebraska which is essential to the welfare of its people, it is hereby declared to be the policy of the state to promote the improvement of personnel management and relations with certificated employees within the public school districts of the state by providing a uniform basis for recognizing the right of public school certificated employees to join organizations of their own choice in Class III, IV, and V school districts and be represented by such organizations in their professional and employment relations with the school district.

Possible conflict with existing Civil Service legislation. The civil service system arose as a result of the famous "spoils system," which among other evils resulted in the assassination of President Garfield in 1881, and which was widely copied by the states. Now that the unions are seeking to represent governmental employees, those who administer these well-established civil service systems feel threatened. Speaking before a Legislative Council Committee on Public Employee Negotiations on April 18, 1968, in Denver, Mr. Del Wilson of the Colorado Civil Service Employees Association expressed this concern as follows:

> As you have noted from the founding action of the Association, we have been the strong advocate and "watch-dog" of the merit principle in State government. We believe that the selection and promotion of public employees should be based on demonstrated merit as determined by competition.
>
> By contrast, it is our experience that employee organizations affiliated with international unions tend to give only "lip-service" to the merit principle. On one hand they call for

> preservation of the principle while on the other, they espouse a philosophy of unions furnishing the labor force to government through the hiring hall. It is our opinion that their philosophy is diametrically opposed to the essence of the merit system.

The speaker then went on to say that the CSCSEA had actively opposed efforts of organized labor to impose industry-style collective bargaining on state, county, municipal employees and teachers in Colorado. However, he said that the organization had no objection to having one law covering all state employees, since the movement toward organization of these employees seemed "inevitable."

If the choice of the legislature is for a single statute covering only certificated personnel, however, perhaps no great accommodation need be made to the state's civil service set-up. But when the statute covers all governmental employees, who may be under an existing civil service system, the problem of accommodation may be complex and frustrating indeed. Michigan got around this by exempting all state employees already covered under the civil service system from the provisions of the negotiations law.

Present legislation of a comprehensive nature, other than in Michigan, does not mention how accommodation shall be made. There is, therefore, some "living with" these statutes to iron out their meaning and to put them into practice which must be done before the most equitable way can be devised.

Wilson R. Hart, in discussing the two opposing points of view on this problem, said:

> The labor approach is based upon the proposition that collective bargaining is a form of democracy; that as such it is inherently good; and that the management of even the best-run establishment, public or private, stands to profit from the cooperation of strong,

> independent, responsible employee organizations. This concept is succinctly articulated in Secretary Wirtz's statement: "Collective bargaining is industrial democracy. We have to make it work."
>
> The Commission approach is based upon the proposition that the art of public personnel management has been so refined and developed that there is neither need nor justification for strong unions in any public agency where this art is skillfully practiced by the personnel managers. Conversely, the only good purposes that unions are capable of serving, as former Commission Executive Director Warren B. Irons has said, are the negative functions of "calling attention to management mistakes" and "keeping management honest." Civil Service Commission inspection reports frequently equate the absence of active unions with enlightened management. A recent report stated, for example, "The lack of employee organization suggests good relations between supervisors and employees." In contrast, management which encourages or even permits strong, active unions to develop is presumed to be weak and derelict. (From the Impasse in Labor Relations in the Federal Civil Service, Ind. & Labor Rel. Rev., Jan. 1966, p. 177).

These two opposing viewpoints are present in states also, causing some friction in adapting industrial practices to the problems faced by governmental employees. When E. O. #10988 was promulgated, it tended to emphasize the differences rather than the similarities between bargaining in the public and private sectors. As we say elsewhere in this report, the President's Task Force currently working on revisions of the E. O. #10988 is stressing the similarities, and it is expected that the report of the task force will be that it would be better to emphasize such similarities in the future.

If such be the case, this should give some guidance to state legislators who are anxiously looking forward to legislation permitting or mandating the right of governmental employees in their states to collectively bargain with the government.

Permissive v. mandatory coverage? Existing statutes covering teachers and other governmental employees tend to be about evenly divided between those which are permissive and those which are mandatory in their coverage. The union-type laws tend to be mandatory, while those applying only to certificated personnel tend to be permissive. The weight of logic seems to be on the side of a mandatory law requiring the governmental body to meet and confer with their employees, and attempt to reach an agreement. There is little substance to the notion that the governmental unit should have the option as to whether or not it wishes to negotiate, since it is only at the discretion of the members of the boards that negotiations can actually take place. Hence, no real gain is made, since there may be this power on the part of the government without the necessity of passing any legislation permitting it.

There seems to be little gain to teachers and other governmental employees to "have the right to bargain without the power to bargain." A permissive law would give such a right, but only at the discretion of the board. In order to be truly equal, teachers must have the right to force the board to bargain, else the statute will lack its most important ingredient.

Representation. Questions of representation include whether or not the representative organization shall have formal or exclusive recognition, whether the state labor mediation board or some other body shall determine conditions of representation, who shall hold elections, and what bargainable items are permitted under the union security clause concept. These questions will be taken up in turn.

Formal representation means that the board of education recognizes the organization, but that the organization can speak only for its own members, not for all the employees in the district. On the other hand, exclusive representation means that the organization which has been certified by the board is recognized as representing all the employees in the district, whether they belong to the organization or not. In the sixteen states having legislation on this subject, fourteen either permitted or mandated exclusive representation, one state (California) had proportional representation, based upon the numbers belonging to each organization, and one state did not specify how representation was to be formalized.

The method of determining the representative unit varied widely. In seven states, the county or local board of education made the determination of who would represent teachers. In another state, the state department of education made the determination, while in another five this was done by the state labor relations board. Three states did not specify how unit determination was to be made.

One question which causes some problems is what is an appropriate bargaining unit? Shall teachers and administrators be included in the same unit? Or shall they have special separate units to represent each group? The trend is toward having separate units for administrators and teachers, although in some state laws, this is not clear. Some of the laws specifically exclude the superintendent and any representatives of the board in the bargaining process, but a wide diversity exists and no one plan predominates. The union view, of course, is that the same union should not represent both the workers and management (administrators) at the same time.

Union security clauses might include the agency shop, in which workers not members of the majority organization must pay a "representation fee" to the organization for the privilege of being represented. This is to prevent "free-riders" who do not join any organization but who nevertheless gain something through the efforts of the organizations in their behalf. The other security clause refers to dues check-off: a plan whereby the board agrees to deduct organizational dues from the monthly pay check of the employee and submit them directly to the organization. This is almost universally practiced in private industry, but has not been so well recognized among governmental workers. Since this is a local affair, it was not possible to determine from an examination of the existing legislation where this was being done, or to what extent.

What is Negotiable?

The second problem faced by legislators relates to the scope of bargaining: what items are negotiable and what items are not? A few years ago, teachers were unhappy because school boards refused to negotiate with them on policy matters. Today, however, the scope of bargaining has been considerably broadened to encompass practically every problem in the solution of which teachers feel they ought to be included. As a matter of fact, actual practice reflects far broader coverage than teachers at first anticipated or requested. While some present agreements are in use in states without collective negotiations laws, in those states having legislation on the subject, the scope of bargaining has

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not been appreciably limited by the statute itself. If anything, the scope of bargaining has been broadened and the procedure clarified by the laws governing negotiations.

In essence, it can be said that negotiations between boards and teachers are conducted currently in two broad, general areas: 1) wages, hours, and conditions of work, and 2) the making of educational policy. In this respect, teachers have been able to go far beyond the usual limitations placed upon the making of company policy by the earlier laws governing bargaining in the private sector of the economy. Even those laws which cover all state government employees, and which are patterned after the so-called "labor" legislation, tend very little to restrict the scope of bargaining between teachers and their boards of education.

While it might be reasonable to argue that wages, hours, and conditions of work amply covers all exigiencies in educational bargaining, the state statutes often illustrate unequivocally the concept that teachers are not to be limited to this narrow territory alone. For example, the Minnesota statute under which all certificated personnel except the superintendent are allowed to negotiate specifies that they shall have the power to negotiate on "conditions of professional service, educational and professional policies, relationships, grievance procedures and other matters as applied to teachers." Similarly, Rhode Island specifies that bargaining shall extend to "hours, salaries, working conditions and other terms of professional employment." Statutes in Washington, Oregon, Texas and several other states are to the same effect.

In general, therefore, legislatures have not tended to be restrictive in allowing a broad base for teacher negotiations with their boards of education. The California statute spells out the scope of bargaining with teachers in that state as follows:

> A public school employer or the governing board thereof, or such administrative officer as it may designate, shall meet and confer with representatives of employee organizations, upon request with regard to all matters relating to employment conditions and employer-employee relations, and in addition, shall meet and confer with representatives of employee organizations representing certificated employees upon request with regard to *all matters relating to the definition of educational objectives, the determination of the content of courses and curricula, the selection of textbooks, and other aspects of the instructional program to the extent such matters are within the discretion of the public school employer or governing board under the law.* (Emphasis supplied).

So much for the statutes. The next question then becomes, "What, actually, is being negotiated in practice?" Here a recent study conducted by the National Education Association is helpful. The NEA, which has some 1,540 written agreements between boards and teachers on file in its Washington depository, reported in the *Negotiations Research Digest* for February, 1968, the extent of the items currently being negotiated throughout the country.

Each of the agreements in the NEA depository was analyzed to see whether a particular item was included in the agreement. A list of 150 various items which could form the basis for negotiations was utilized. The 150 items fell into 15 categories, as for example, negotiation procedure, scope of the agreement, and the rights of the representative organization. The 15 categories are listed below, together with two or three sub-items under each to illustrate the extent and kind of bargaining which was going on. The numbers in parentheses (0) after each item indicate the number of agreements among the 1,540 on file at the NEA which contained that particular item.

1. Negotiation procedure
    a. Contains specific items included or excluded from negotiation (456)
    b. Structure of negotiating committee (341)
    c. Procedure for impasse in negotiations (524)
2. Scope of the agreement
    a. General statement of recognition (908)
    b. Classification of persons covered or excluded under the agreement (421)
    c. Savings clause (235)
3. Rights of representative organization
    a. Nondiscrimination clause against membership in employee organization (528)
    b. Check-off of dues deduction (335)
    c. Use of school communications system, bulletin boards, and mail boxes (458)
4. Teacher activity
    a. Individual or minority representation to the administration (620)
    b. Personal activities outside school (18)
    c. Political activities outside school (115)

5. Board rights
    a. General statement of responsibility (227)
6. Instructional program
    a. Pupil ratio and class size (222)
    b. School calendar or year (253)
    c. Evaluation of teacher performance (48)
7. Personnel policies and practices
    a. Teaching hours or day (203)
    b. Lunch period for teachers (237)
    c. Transfers (265)
8. Method of selection of arbitrator, mediator, or review panel for grievance procedure
    a. Joint selection each time as needed (35)
    b. State labor board (142)
    c. American Arbitration Association (114)
9. Miscellaneous teacher concerns
    a. Assault cases and pupil discipline (234)
    b. Teacher's personnel file (176)
    c. Teacher facilities, e.g., lounge, parking space, desk, storage room (214)
10. Salary policy
    a. Salary credits for prior growth and experience (267)
    b. Salary increments for professional preparation (361)
    c. Extra duty pay for special activities (277)

11. Fringe benefits
    - a. Tuition reimbursement (97)
    - b. Terminal leave or severance pay (110)
    - c. Health services (46)
12. Part or full premium payments by board or other agency
    - a. Health insurance (226)
    - b. Liability insurance (94)
    - c. Life insurance (32)
13. Available through board cooperation only
    - a. Income protection or disability insurance (18)
    - b. Tax-sheltered annuity (41)
    - c. Liability (2)
14. Absences with full or part pay
    - a. Bereavement leave (142)
    - b. Personal business leave (163)
    - c. Jury duty, selective service examinations, medical examinations, religious holidays, foreign and domestic exchange, professional conferences
15. Absences without pay
    - a. Sick leave (138)
    - b. Maternity leave (233)
    - c. Peace Corps (92)

Among the unusual provisions of agreements between boards and teachers are the following:

1) If a teacher is absent because of illness due to a childhood

communicable disease definitely traceable to contact made in school, the absence will not be charged against him (Manchester, Conn.).

2) Under no condition shall a teacher be required to drive a school bus as part of his regular assignment (Hancock, Mich.).

3) The private and personal life of any teacher is not within the appropriate concern or attention of the board except when it impairs the teacher's effectiveness in the classroom or position. Notwithstanding their employment, teachers shall be entitled to full rights of citizenship and no religious or political activities of any teacher or the lack thereof shall be grounds for any discipline or discrimination with respect to the professional employment of such teacher (Hancock, Mich.).

The question of what is negotiable is often related to the type of agreement or statute in force. In general, five types of agreements are in use throughout the country:

1) Some agreements provide only for recognition of an organization as representing the teachers or professional staff or other designated group of employees (called Level I agreements);

2) Some agreements provide only for recognition (Level I) plus negotiation procedures and go no further (called Level II agreements);

3) Some agreements contain recognition of a representative organization, plus negotiations procedures, plus impasse procedures (called Level III agreements);

4) Some agreements may or may not contain impasse resolution procedures, but will contain in addition to the recognition and negoti-

ation procedures such features as a salary schedule, leave policies, and other negotiated items relating to personnel and conditions of work often found in personnel handbooks or school system policies (called Level IV or comprehensive agreements); and

5) Some agreements do not recognize organizations for negotiation purposes and utilize some other negotiation procedure.

It should be remembered that de facto negotiations are going on even in those states having no legislation on the subject. These states vary widely in the extent to which local boards have given permission to teachers' groups to operate at Level I, Level II, or Level III. Even in those states which have legislation governing negotiations between teachers and boards of education, practices vary considerably within each state.

No comprehensive studies have been undertaken which would clarify the picture and answer the question, "What is negotiable?" In essence, there is a tendency to bargain on a broad base of items, including in addition to wages, hours, and conditions of work the right of teachers to enter into the making of policy insofar as boards may legally go in permitting teachers to participate in the making of school policy. No doubt this trend will continue, especially in those states which enact a single law which covers only certificated personnel in the public schools of the state.

Impasse Procedures

The concept of impasse has application at two distinct points in the bargaining process: 1) when negotiating new terms of agreement (bargaining impasse), and 2) when interpreting and applying the provisions of an existing agreement (generally referred to as a grievance dispute rather than an impasse). At either time, the parties may employ self-help or the services of impartial third parties to overcome deadlocked positions.

The strike. The right to strike has been recognized as an important employee prerogative in the free collective bargaining process of the private sector. It is an integral part of the negotiation of new contract terms. Bargaining strategy in private enterprise may evolve around the effect of an employee strike on the participants or the exercise of such corollary prerogatives of management as the lockout or discontinuance of business altogether. The strike may also be employed in resolving differences concerning the meaning or application of an agreement already consummated, but these disputes generally are settled through the steps of a grievance procedure terminating in final and binding arbitration. In an estimated 96% of the labor contracts in this country, unions have agreed that resolution of these disputes shall be found in the orderly means of grievance arbitration rather than in the strike. In contrast, and with very few exceptions, disputes over the negotiation of labor contracts are not resolved through the arbitration process even though compulsory arbitration of such disagreements has been given serious attention in recent months.

In the public sector, employees have not been given the right to strike. The strike, while not usually characterized as an insurrection against the government, has been found to be unlawful conduct because it prevents government from discharging its obligations to provide public services without interruption and deprives the public of protection and their right to essential services. Strikes by governmental employees have been found illegal and enjoinable by the courts. Legislatures have enunciated the no-strike principle in public employment, and often established severe penalties for violation of that law; while, in some instances, they have specifically granted the right to strike to private employees. No-strike legislation may constitute a deterrent to strikes by public employees, but it has not effectively prevented strikes. There has been increasing strike activity among public employees, clearly evidencing a substantial dissatisfaction with governmental treatment of employment problems.

Accelerated public employee unionism may also significantly contribute to increased strike activity. Union membership in the governmental sector has risen from approximately 900,000 in 1955 to over one and a half million in 1967. Militant public employee organizations not only advocate the need of public employees to strike but amass large strike funds in anticipation of the strikes they feel are imminent. The extent of public employee unionism is readily recognized in the statistics compiled in the 1967 Municipal Yearbook of the International City Managers' Association, Chicago, which reveal that 99% of all cities with a population over 250,000 in the United States now must deal with one or more employee organizations; and approximately 91% of all cities over 10,000 in the United States report one or more organizations in their city. See Fact Sheet Number 6, Appendix A.

The 1,900,000 teachers in this country are exceptionally well organized. The National Education Association has a reported membership of approximately one million; the American Federation of Teachers has a reported membership of approximately 165,000. Teachers in both groups are militant, engage in strikes, and are presently amassing large strike funds. The AFT, an AFL-CIO affiliate, espouses the right of public employees to strike. The NEA deleted its no-strike policy at its 1966 convention and adopted a strike-support policy at its 1967 convention by providing for funds, legal advice and staffs to assist its striking affiliates. Its recommended procedures to be used when teacher representatives reach an impasse with agencies controlling schools include mediation, fact-finding, arbitration, political action and sanctions. The NEA recommends that every effort be made to avoid the strike as a procedure for the resolution of impass but it "recognizes that under conditions of severe stress causing deterioration of the educational program and when good faith attempts at resolution have been rejected, strikes have occured and may occur in the future. In such instances, the NEA will offer all of the services at its command to the affiliate concerned to help resolve the impasse." The Florida Education Association, an NEA affiliate, engaged in the first state-wide strike in the nation's history in February, 1968, when 35,000 of the 60,000 teachers in the state tendered resignations and remained away from their work for three weeks.

Work stoppages among teachers was a recent subject of survey by the Bureau of Labor Statistics. In an examination of the 33 teacher strikes in 1966, it was noted that the strikes were of relatively short duration, frequently intended as a "protest" to the public or the legislature rather than to enforce an immediate employee demand, and primarily conducted through affiliated organizations of the American Federation of Teachers or the National Education Association. Teachers were represented by AFT affiliates in 20 instances of work stoppages; and by NEA affiliates in 11 cases but these 11 accounted for more than 80% of all teachers involved in 1966 stoppages. Nine of the 33 stoppages were attempts on the part of teachers to secure from school authorities some type of recognition of their right to speak collectively. Salaries or hours of work, or both, were the major issues in 16 of the work stoppages. Eight other stoppages involved other working conditions and were in the nature of protests. Significantly, it is noted that only 2 of the 33 stoppages in 1966 involved renegotiation of an agreement. These statistics suggest that it may be shortsighted to focus on strikes exclusively as disruptive stoppages and ignore the significant process of development of the right to representation and collective bargaining.

Where a statutory prohibition against public employee strikes is enacted, it is important to carefully define the word "strike" to avoid a later court holding that the statute is unenforceable because of vagueness. Legislatures may also feel it important to establish specific penalties for violation of any no-strike law against the employee organization involved as well as against the individual public employees participating in the strike. The penalty imposed on the employee organization may be in the form of a fine or suspension, for an indefinite or a specified time period, or revocation of the organization's right to representation together with such accompanying rights as dues check-off. Striking employees may be made subject to a fine, suspension, demotion or discharge depending upon the kind and extent of misconduct. A flexible system of non-mandatory penalties may be preferable to an inflexible system. Similarly, discretion may be placed in the officer responsible for instituting appropriate court action concerning the time for commencement of that action to effect penalties against the striking employees and their representative organization. The mere fact that a strike occurs may be held quite insufficient cause for the court's issuance of an injunction, which is an equitable form of relief based upon judicial consideration of all facts and circumstances surrounding the strike. The acts of the public employer may be as important to a court in the exercise of its discretion in ordering injunctive relief as the acts of the employees or their representative organization. Thus the relative culpability of the parties might be used to determine whether a strike should be enjoined as well as the appropriate penalties for striking.

Growing unions of government workers have criticized both no-strike legislation and imposition of those penalties arguably intended to destroy unions. They contend no distinction in fact exists between private industries engaged in services which deeply affect the public health, safety and welfare and the activities of public employees to justify the differences in no-strike philosophies. They defend strikes and mass resignation of public employees as necessary to genuine free collective bargaining.

Other observers, impartial practitioners and students of the collective bargaining process also urge the need for limited strike rights among public employees. Dr. Jack Stieber, Director of Michigan State University School of Labor and Industrial Relations, has recently stated that "only those public employees working in essential occupations should have the strike weapon limited or denied." He suggests that government employees be classified into the following three categories:

1) Police, firemen and prison guards, who should submit their disputes to compulsory arbitration;
2) Hospital, public utility, sanitation and school employees, whose services can afford to be interrupted for a limited time but not indefinitely, and who should not be prohibited from striking except when the health, safety or welfare of the community is threatened; and
3) All other public employees, who should be permitted to strike just as in the private sector. (But see Fact Sheet #5, Appendix A)

Professor Herman Erickson of the Institute of Labor and Industrial Relations at the University of Illinois argues that public employees ought not be denied the right to strike; rather, means should be devised to make strikes unnecessary. "The overemphasis on prohibiting strikes has led legislative bodies into a blind alley. It is urgently necessary that state governments take a new look at their position in view of the objective they seek. It is essential that legislation relating to collective bargaining for public employees provide the organizations of such employees with some sort of bargaining power which emphasizes prevention rather than prohibition in strike action."

In an effort to afford public employees with a viable alternative to the strike, there has developed broad scale experimentation with mediation, fact finding and arbitration. Generally, such third party procedures have been accepted only after assurances that strike activity will not be engaged in. The law may leave the public agency and the employee representative to work out dispute-solving techniques, or it may establish machinery for resolving disputes that will operate automatically on a given time table. Wherever such third party participation is a part of the established system of bargaining, the negotiating may be geared for such outside intervention to the detriment of the bargaining process unless the parties constantly keep in mind that the primary responsibility for arriving at agreement always remains with them.

Mediation. Mediation has been found to be an especially valuable method for dealing with important and difficult issues that remain unresolved after earnest efforts by the parties to reach agreement though negotiations have failed. The function of the mediator is to assist both parties by helping them to see logic in the other's demands and by making new suggestions for the parties consideration. The mediator does not take sides. He should not make a public statement or report concerning the negotiation issues, the relative merits of the positions of the parties, or the state of the resolution of an impasse. Mediation cannot be effective when conducted in public.

The requirement that mediation be initiated only on the joint request of both parties is usually premised on the belief that it is necessary to assure that mediation is not invoked prematurely or on inconsequential matters. Such a requirement may, however, effectively preclude mediation of a dispute. There can be no mediation unless the parties jointly agree as to the details on the selection of the mediator, the scope of his authority and reporting requirements, and the sharing of his expenses. For that reason, it may be desirable to authorize the agency which is established to administer the law with power to initiate mediation on its own motion.

Where the state has an existing mediation agency staffed with skilled mediators, considerations of economy, efficiency and sound administrative practice might dictate the use of the expertise of that agency supplemented by per diem ad hoc specialists in matters of mediation. The Rhode Island Act, in an apparent effort to accommodate conflicting positions of teachers unions and teachers associations, permits the teachers' representative or the school board, within thirty days from their first bargaining meeting, to request mediation upon any and all unresolved issue by the state department of education, as favored by the associations, or the state director of labor, as urged by the unions, or from any other source. When testifying before the Senate Education Subcommittee in August, 1967, U. S. Education Commissioner Harold Howe II, when asked if he had given thought to recommending the establishment of a mediation service under the office of education answered that he had but he had reached no definite decision in the matter.

The concept of preventive mediation techniques, developed by the Federal Mediation and Conciliation Service, to stimulate continuing dialogue and problem exploration by the parties in the period between contract negotiations is considered by FMCS Director William E. Simkin, as of as much significance for public employees as impasse mediation.

Fact finding. Another technique for dealing with impasses is that of fact finding. It is not a substitute for mediation, but may be employed when even with the help of mediation, the parties are unable to resolve their differences. Recourse to fact finding may be at the initiative of either or both of the parties, but as with mediation, the regulatory agency in the state, that should be kept continuously informed regarding the progress of negotiations, must also have power to initiate fact finding after the time for mediation has expired.

The neutral agency may have sole discretion to appoint the fact finder or allow the parties to participate in that appointment. Because the advisory recommendation of the fact finder are a part of the bargaining process and must be found acceptable to the parties if they are to voluntarily settle their dispute following fact finding, it seems most desirable for the parties to participate in the fact finder's appointment.

Proper timing of fact finding is of the utmost importance. The Advisory Committee on Public Employee Relations in Michigan has been quite critical of fact finding as it has taken place in that state because it is too often invoked at the crisis stage and is more often intensified mediation rather than a process of orderly and rational consideration of facts bearing on the merits of disputed issues. The Advisory Committee called for dispute-settling procedures to be enacted by the legislature to assure more effective use of these important devices.

Fact finding is an orderly informal hearing procedure, before an individual or a panel, wherein the parties adduce evidence and argument going to the issues in dispute and negotiations. The fact finder should be given power to schedule and adjourn the hearing; to place witnesses under oath; and to issue subpoenas for witnesses, books, documents or other evidence. Some states place the subpoena power in the appointing agency rather than the fact finder but this appears unnecessary and may create inconvenience and costly delay during a hearing. Following the hearing, and within such time limits as will meet the budget-making activities of the public employer, the fact finder should render to the parties a full written report containing findings, conclusions and recommendations, and may attempt a final mediatory effort with the parties. The parties should be required to respond to the individual recommendations before the fact finder makes his report public. In this way, the public is fully apprised of the state of negotiations and the positions of the parties in light of the fact finder's report and recommendations and can bring to bear upon the private decision-making process the impact of an enlightened public opinion. The experience in Wisconsin evidences the effectiveness of such fact finding. There, fact finding has been successful in resolving about 90% of bargaining impasses.

The cost of fact finding is usually shared by the parties on the premise that the process may be abused if the cost is borne by the public rather than the parties. This factor also reduces the temptation to leave the dispute to the fact finder rather than resolve it through bargaining.

The Massachusetts statute covering teachers provides: "Sec. 178 J (a). If, after a reasonable period of negotiation over the terms of an agreement, a dispute exists between a municipal employer and an employee organization, or if no agreement has been reached sixty days prior to the final date for setting the municipal budget, either party or the parties jointly may petition the state board of conciliation and arbitration to initiate fact finding. . ."

On April 3, 1968. the Massachusetts Board of Conciliation and Arbitration issued revised rules for fact finding. The rules specify the circumstances under which a fact finder may enter a dispute, outline his authority and responsibilities, establish ground rules for the conduct of hearings, and set standards for the fact finder's report. The Massachusetts rules are set forth as Fact Sheet Number 10, Appendix A.

Many authorities contend that fact finding should be an open-ended technique for dealing with bargaining impasses. That is, compulsory arbitration should not be available if fact finding fails. They argue that while mediation and fact finding is a logical extension of the bargaining process, and the most satisfactory substitute for the strike, compulsory arbitration adds a new and undesirable dimension to the settlement procedure.

Compulsory arbitration. Compulsory arbitration, as a third method of resolving a dispute with the help of outsiders, is much like fact finding except that the parties are bound by the award of the arbitrator and there is less likelihood the arbitrator will engage in mediatory acts during or after the hearing.

A view widely held by public employers and employees is that compulsory arbitration destroys real collective bargaining. Extremist strategies develop in the bargaining process as the parties prepare to submit an issue to the final and binding authority of an outsider. In spite of this, compulsory arbitration is being given more and more serious consideration.

Governor Romney's Advisory Committee on Public Employee Relations has recommended an experimental three-year period of binding arbitration of contract disputes limited initially to police and firemen.

In November, 1967, Pennsylvania voters approved a referendum which authorized the state legislature to adopt a system of final and binding arbitration concerning pay scales, working conditions, and benefits for municipal fire fighting and police department employees. AFL-CIO President George Meany had urged voters to approve the question for the reason that "binding arbitration will make it possible for them to achieve fair and reasonable collective bargaining agreements," since because of the nature of their work these employees do not have the right to strike.

Rhode Island has already provided that either party may initiate binding arbitration of teacher bargaining disputes in "matters not involving the expenditure of money." No appeal lies from the arbitral decision except on the ground that the decision was procured by fraud or that it violates the law.

Grievance arbitration. As earlier indicated, the resolution of disputes concerning the interpretation and application of terms of an existing contract, in 96% of the labor agreements in the private sector, is provided for in the steps of a grievance procedure terminating in final and binding arbitration. The impetus for arbitration arose out of the experience of labor and management under the War Labor Board during World War II. Following the war, the parties voluntarily agreed to continue to submit their unresolved grievances to third parties. It is estimated that today there are as many as 3,000 labor arbiters in this country. Some of them are full-time arbiters; most of them are members of college or university faculties who arbitrate part-time. The National Academy of Arbitrators is a professional organization which has elected to its membership approximately 350 of the most active arbitrators. The American Arbitration Association and the Federal Mediation and Conciliation Service provides panels of arbitrators to those representatives of labor and management who desire the services of an arbitrator and have not otherwise provided for his mutual selection.

In the public sector, the concept of sovereignty, which holds that public employers may not delegate their discretionary authority and so may not agree to be bound by the holding of a third party arbitrator, has deterred the development of binding grievance arbitration. Consequently, advisory arbitration, which might be more appropriately called grievance fact finding with recommendations, has been frequently agreed to by public employers and employees at the state and local levels in jurisdictions where the enforcement of binding grievance arbitration clauses are in doubt. Some state legislature, e. g., Massachusetts and Rhode Island, have provided for binding arbitration. Recent, judicial decisions in Wisconsin and New Hampshire have upheld the enforceability of binding arbitration provisions. The Governor's Advisory Committee in Illinois recommended that agencies be authorized but not required to provide for binding arbitration of disputes concerning the administration or interpretation of collective agreements. At the federal level, E. O. #10988 provides for advisory arbitration of grievances, and the process has also been used in unit determination disputes.

Where the parties agree on some form of arbitration, they generally agree to equally share the costs of arbitration. Ad hoc arbitrators are the rule; an exception is the New York City teachers agreement which, beginning in 1965, called for a permanent panel of three arbitrators. The principal appointing agencies, when used, are the American Arbitration Association and state mediation or labor relations agencies.

The administrative organization

An analysis of public employee bargaining laws and their underlying policy consideration provides little insight for a model administrative organization. Similarly, the functions of any administrative organization--over unit determination; election proceeding; disputes concerning representation and contract terms; mediation, fact finding and arbitration services; enforcement of the policies of the act including strike penalty provisions--do not dictate a single, most appropriate administrative body.

Teachers in Wisconsin, Michigan and Massachusetts find jurisdiction over public employee labor relations conferred on state labor relations agencies, i.e., the state labor relations and mediation boards, while teachers in California, Connecticut, Oregon and Washington find such jurisdiction in educational channels. It should be noted, however, that, except for Connecticut, states in this latter group have not created the comprehensive labor relations rights and duties for the public sector as have states in the former group. As a result, the same demands are not placed on their departments of education as upon the state labor boards. Rhode Island placed all administrative responsibilities in its state labor relations board except for impasse procedures which may be effected through the state department of education, the director of labor, or from any other source. New York City had an established bargaining procedure which hindered the state from pre-empting the collective bargaining field when it eventually enacted legislation. Consequently, there is the city agency, the Office of Collective Bargaining for New York City and the state Public Employment Relations Board within the state department of civil service;--both are new public agencies. A new independent agency to administer any promulgated public employee labor relations act was recommended by the Illinois Governor's Advisory Commission.

State departments of education have been urged as appropriate administrators of teacher labor laws by the Nation Education Association, and some of its affiliates, because of the position NEA has taken with regard to the need to resolve all disputes within the professional family and its desire not to endorse labor oriented concepts and institutions. A similar approach has been taken by the professional organizations of civil service employees toward the civil service commissions as administrators of state laws.

Private agencies, such as the American Arbitration Association, have also been used to assist in the effectuation of some state labor relation policies, but obviously this has been largely limited to representation, impasse and grievance dispute services.

The advantages of utilizing existing state labor relations and mediation boards lie primarily in the areas of presently existing expertise, economics, and administrative efficiency. The advantages must be weighed against the likelihood that these agencies might overstress the similarities between the bargaining process in the private and public sectors to the neglect of the differences that exist and, consequently, try to shape bargaining in the public sector to the established private sector process. In addition, it is argued that utilization of existing labor agencies ignores the deeply entrenched adverse attitudes of some professionals in the public sector toward becoming a part of the labor process. A new public agency, it is said, would not carry any labor stigma and should attract trained and well qualified experts in labor relations to the challenge of new concepts in public employment relationships. The contended advantage of the professional agency, such as the state department of education, is grounded in the "all one professional family" concept. Even if this concept were generally accepted by all members of the teaching profession, and it is abundantly clear it is not, there exists cogent disadvantages in reposing the foreign functions of a labor relations administrative agency in an office which must otherwise effectively perform educational functions with the full cooperation of those engaged in the collective bargaining process.

The adoption of such divergent laws, as illustrated here, calling for administration by established state agencies oriented to labor relations problems in the private sector; or by new agencies which are likely to be staffed with personnel trained in private sector labor relations if they are to efficiently and competently meet the responsibilities suddenly thrust upon them; or by professional administrators in education who are keenly familiar with the problems of teachers and administrators in our public schools but lacking, by training or experience, in the art of negotiation, mediation, fact finding, and arbitration; suggests that great diversity among the states may arise with the development of public employee labor relations. Such diversity and experimentation can, in the long run, provide us with a superior model, but one may question whether those states that have forged out another model will be able to abandon their own handiwork. Will the then established attitudes and interests prevent a unified approach for public employee labor relations at the state and local levels? At the moment, the differences primarily present difficulty in the adjustments that must be made in organizational efforts and bargaining strategies, but as the public employer-employee relationship develops, these differences could cause serious disruption in that development.

APPENDIX A

FACT SHEETS

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FACT SHEET NO. 1

PUBLIC INTEREST IN TEACHER BARGAINING

George W. Taylor, Harnwell Professor of Industry, Wharton School of Finance and Commerce, University of Pennsylvania, paper, June 22, 1966. School teachers have long continued to be voiceless outside the classroom. The greatest concern of the public about collective negotiations in education is not simply about whether teachers are entitled to "a better break," but whether the process will improve or decrease the chances of developing an educational program adapted to the needs of a changing world. Even granting that satisfied teachers are an essential requirement for quality teaching, there are limitations to the proposition that what is good for the teachers is good for the students, and hence, for the public.

Fortune, October 1967, p. 114. A Gallup poll conducted in April, 1967 revealed that three-fourths of those questioned favored mandatory compulsory arbitration after a strike had been going on for three weeks.

Randy H. Hamilton, August 1967. In 1967, a Louis Harris Public Opinion Poll showed that 77% of the American public queried said they believed in the right to strike in private industry. But only 48% said they "would accept strikes against government." Public employees union leaders say that this represents a remarkably high public tolerance of strikes by government employees. Because they are bending every effort to create a new climate of public opinion, these leaders hope to affect another 2% of the population, so that by the end of 1968, half of the American public will accept strikes against government.

FACT SHEET NO. 2

EXTENT OF THE EDUCATIONAL ENTERPRISE

Full-time formal education in the United States involves over 60,000,000 students and at least as many parents. It is of vital concern to 100,000,000 taxpayers. School expenditures, after national defense, take the largest share of tax revenue--$40,000,000,000 a year when college and university costs are included. There are more than 2,200,000 teachers, administrators, and other school employees, including perhaps 500,000 non-certificated personnel.

There are 21,704 basic administrative units (school districts)

Average annual salaries, all instructional staff, $7,597

Average annual salaries, classroom teachers, $7,296

Population (5-17) was 50,584,000 on July 1, 1967, a gain of 17.6% over April 1, 1960 and constituted 26.1% of the total resident population.

Elementary enrollments increased 21.3% and secondary enrollments 72.6% between 1957-8 and 1967-8. Secondary costs per pupil are higher than for the elementary schools.

Men account for 14.6% of all classroom teachers in elementary schools, and 53.7% in secondary schools, for an overall percentage of 31.7% of all classroom teachers. Men classroom teachers as a percent of total classroom teachers have been increasing steadily.

More than eight classroom teachers in ten receive more than $5,500 annually. However, the salary in the state with the highest average annual salary of instructional staff is twice that of the state with the lowest salary.

FACT SHEET NO. 2

EXTENT OF THE EDUCATIONAL ENTERPRISE

36.7% of all public school teachers are paid more than $7,500; range is from 0.2 in one state to 90.5% in another.

Instructional staff salaries increased 6.6% from 1966-7 to 1967-8.

12.4% of selective service draftees in the U. S. failed the pre-induction and induction mental tests in 1966; the range is from 3.2% in one state to 34.5% in another.

In 1966, 21.5% of all households in the U. S. had incomes under $3,000; the range was from 11.2 in one state to 41.5 in another.

Approximately 21.5% of the households in the same year had incomes of $10,000 or more; the range was from 11.3% in one to 36.4% in another.

The U. S. average number of federal civilian government employees per 1,000 population in 1966 was thirteen; range was from six to fifty-four.

The number of government employees of all kinds per 1,000 population in 1966 was fifty-seven. The range was from forty-four in one state to 103 in another.

Government employees as a percent of employees in all nonagricultural establishments in 1966 (U. S. average) was 17.0; the range was from 11.1% in one state to 42.5% in another.

FACT SHEET NO. 3

EXTENT OF PUBLIC EMPLOYMENT

Speech by Secretary of Labor Willard W. Wirtz, April 27, 1966.

One out of every six employees in this country is today on a public payroll. There are 10 1/2 million government employees, and by 1975 there will be 15 million.

Ten years ago there were 7 million public employees.

Federal employment today is only 190,000 more than it was ten years ago, an increase of 9%. The number of federal employees increased from 2,270,000 in 1960 to 2,378,000 in 1965. There are presently fewer federal employees for every 1,000 people in the country than there were five years ago.

Three-quarters of the public employees today are state or local employees. Their number has increased from 4.7 million ten years ago to 7.7 million now. For every one federal worker added in the past ten years, there have been fifteen state and local workers added. Most of the additional 5 million employees who will be on public payrolls by 1975 will be state and local.

One out of every two state and local employees is engaged in education. There has been a shifting emphasis in this society from goods to services. "Creative federalism" trends toward the transfer of responsibilities to the state and local governments.

State and local indebtedness has increased 123% in the past ten years, while the federal debt has increased by 16%--and is in fact lower in relationship to the gross national product than it was in 1955.

FACT SHEET NO. 4

WORK STOPPAGES BY GOVERNMENT WORKERS

Work Stoppages Involving Government Workers, 1966, U. S. Bureau of Labor Statistics, 1967.

Total number of work stoppages nationwide in 1966 among governmental workers was greater than the four previous years combined. Of 142 stoppages in the U. S., none were reported by federal employees, nine involved state governments, and 133 were at local government levels.

54 were in public schools and libraries
36 were in sanitation services
19 were in administration and protection services
17 were in hospitals and other health services

105,000 out of 8.3 million state and local employees were involved. About two days were lost due to stoppages for every 10,000 days worked. (Corresponding ratio for private industry was 19 days in 1966).

The major issues in 78 stoppages were salaries and related supplementary benefits. In 36 cases, organization and recognition disputes were central, while in 21 cases matters of administration were the principal issue.

Number of teacher strikes in the United States by years: 1880-1940, 20; 1940-1944,17; 1945-1952, 73; 1953-1962,20; 1963-1965, 16; 1966, 33; 1967, 75; and 1968 (est) 100+.

Randy H. Hamilton, Exec. Dir., Institute for Local Self Government.

Number of public employee strikes rose from 28 in 1962 to 42 in 1965 and to more than 150 in 1966. Present tallies at midyear, 1967, indicate a possible doubling of that number this year.

FACT SHEET NO. 5

RIGHT TO STRIKE OF GOVERNMENTAL EMPLOYEES

Speech by Secretary of Labor Willard W. Wirtz, April 27, 1966.

"The Condon-Wadlin Act is a glaring illustration of the unfairness, the absurdity, and the ineffectiveness of outlawing the strike without any provision whatsoever for alternative procedures settling the honest and legitimate issues which might cause a strike. The recent report of the New York Governor's Committee on Public Employee Relations, under the chairmanship of George W. Taylor, reflects a constructive approach to this problem."

The occasional attempt to distinguish between governmental functions in terms of their "essentiality" is fruitless. Policemen and firemen are no more essential than school teachers; it is only that the costs and losses from doing without the police and fire departments are more dramatic and immediate. Every government function is essential in the broadest sense, or the government shouldn't be doing it. In almost every instance, the government is the only supplier of the service involved--and there is serious question about the legitimacy of any strike which deprives the public of something it needs and can't get from somebody else.

George W. Taylor, June 22, 1966.

Belatedly the public has come to realize that a ban on strikes by public employees is not viable in the absence of alternate and effective procedures, other than the strike, to assure equitable treatment of employees. There is evidence that some governmental administrators tend, consciously or not, to rely upon the ban on strikes as a license for the arbitrary exercise of prerogatives and as immunity against their failures to negotiate in good faith with employees.

Suggests that a distinction be drawn between work stoppages as an expression of civil protest against patently unfair treatment and their adoption as a regular way of life. We must find a way to channel conflict in such a way as to facilitate the reconciliation of those interests by agreement. In these terms, the current demand by public school teachers for more effective participation is in the established American tradition.

Randy H. Hamilton, Exec. Dir., Institute for Local Self Government, August, 1967.

No strike statutes are in effect in 18 of the states, and 12 others have prohibitions against governmental workers going on strike as a result of court decisions.

National League of Cities recently reported "it's obvious that cities need help in developing skilled negotiators. Also needed is a body of practical knowledge on ways to deal with growing employee militancy. At present, no source exists that can provide a full range of assistance."

The only way in which employees can reject an employer's offer is to stop work. Consequently, collective bargaining can hardly exist without preserving the right to strike. (Quoted from Cox. Law and the National Labor Policy, Institute of Industrial Relations, University of California, L. A., 1960)

FACT SHEET NO. 5

RIGHT TO STRIKE OF GOVERNMENTAL EMPLOYEES

National Council of Churches, Labor Sunday Message, 1967.

Public employees should not be denied the right to strike solely by virtue of their public employment. In areas such as fire, police, or other services, where a strike would seriously endanger the public health or safety, other alternatives must be found. Voluntary (not compulsory) arbitration, mediation, and "continuous negotiation" are among such avenues.

The way to industrial, as to international, peace is through endless persistence, responsible patience and goodwill, and imaginative and cooperative search for alternatives to the strike. Only in the rare cases when genuine damage to the general welfare clearly outweighs the values of freedom in labor-management relations is denial of the right to strike justified; and then viable alternative methods must be found for securing freedom and justice for workers. Otherwise the right remains a desirable element of our national labor policy.

FACT SHEET NO. 6

UNIONISM AMONG GOVERNMENTAL EMPLOYEES

Randy H. Hamilton, Exec. Dir., Institute for Local Self Government.

Labor unions have increased their share of the public jobs from 13% to 16% in the past ten years. Union membership in the governmental sector has risen from around 900,000 in 1955 to over 1,500,000 today, and it is growing at the rate of 1,000 new members every workingday!

The American Federation of State, County, and Municipal Employees (AFSCME) has grown from less than 100,000 to nearly a million members in ten years.

The American Federation of Teachers (AFT) has climbed from 45,000 to 145,000 in the same time (10 years), while the American Federation of Government Employees (AFGE) rose from 51,000 to 235,000.

Unionism is most common in New England where 76.3% of all cities have dealings with labor unions. The following table shows the percentages of cities reporting employee organizations:

Number of Organizations Reported

Population	None	One	Two	Three	More than three
Over 500,000	0%	0%	16%	8%	76%
250,000-499,999	0%	5%	40%	15%	40%
100,000-249,999	6.4%	28.6%	22.2%	20.6%	22.2%
50,000- 99,999	23.1%	27.9%	26.5%	13.9%	8.9%
25,000- 49,999	33.7%	29.9%	21.1%	10.9%	4.1%
10,000- 24,999	57.6%	24.3%	13.7%	3.9%	0.5%

Source: 1967 Municipal Yearbook, International City Managers' Association, Chicago.

The terms and conditions of employment for about 40% of all federal employees are now negotiated through employee organizations with exclusive recognition for collective bargaining.

FACT SHEET NO. 6

UNIONISM AMONG GOVERNMENTAL EMPLOYEES

More than 25% of the nation's teachers are covered by collective negotiations agreements.

Since our biggest future growth in employment will not be in blue collar operations, union recruitment of white collar members is of a life-or-death significance for unions. Thus, the new militancy of public employee unions is not going to decrease.

For the unions, "continued pressure" is the current policy. In one month, for example, more than 40 different meetings for union members were held in one District Council (37) of AFSCME. The range of membership at the meetings is interesting to note: park employees, recreation employees, civil service technical guild, laborers, hospital employees, health employees, housing authority employees, motor vehicle operators, supervisors of automotive plant and equipment, judicial conference, finance, highway and sewer foremen, real estate employees, transit board employees, public works personnel, water supply foremen, accountants and actuaries, traffic employees, library employees, antipoverty employees, climbers and pruners, gardeners and foremen of gardeners, uniformed park employees, hospital professional clerical-administrative, museum employees. All are separately organized, bargain separately and are in their own union locals.

FACT SHEET NO. 7

POSTULATES OF COLLECTIVE BARGAINING

Vernon Jensen, Industrial and Labor Relations Review, July, 1963.

1. A genuine interdependence exists between the parties, and this interdependence is more than pecuniary.

2. The parties, however, also have diverse or conflicting interests.

3. An employee group is not a monolithic organization. At least three groups in it may be recognized: a hierarchy or paid staff, the dedicated or core group, and the rank and file.

4. The parties to collective bargaining are not completely informed of the precise nature of the position of the other.

5. Both parties operate within certain internal and external restraints. Bylaws and policies, as well as the internal politics of the organizations, set limits for bargainers.

6. It must be assumed that the parties, over time, find some balance of power. Power to paralyze is alien to the collective bargaining process.

Charles T. Schmidt, Jr. A Guide to Collective Negotiations in Education, 1967, p. 12.

Collective bargaining, whether private or public, is never strictly an exercise in either "raw power" or "rational problem solving." Rather, it is almost universally a combination of both, and the appropriate use of either and the overall mix is determined by whatever issues, circumstances, and limitations of time are pertinent and by the skill and personalities of the negotiating parties.

In public employment--as well as private--no other institution for the resolution of employee-employer conflicts and disputes over wages, hours, and working conditions is as compatible with a free, open, democratic society as the institution of collective bargaining.

FACT SHEET NO. 8

SUBSTITUTE PLANS FOR COLLECTIVE BARGAINING

Randy H. Hamilton, Exec. Dir., Institute for Local Self-Government.

Biggest problem is the question, "Who is the employer?" Is it the mayor, the city manager, the governor, the head of the department, or is it the people?

Government is a monopoly created to perform essential public services. It is not subject to the normal market pressures of the private sector. Government cannot lock out employees, go out of business or increase prices. In government, authority is decentralized in contrast with centralized administration in private industry.

It is contended that government employers through civil service and merit system programs have in fact created the "substitute system of employee-employer relations" suited to the "exigencies of the public service."

Government negotiations with employees must be tied to statutory budget deadlines, the taxing power, and income from state and federal sources.

Notion of sovereignty: but in Canada the "Queen in Parliament", the ruling sovereign, has been legally classified as just another employer. The unions claim that sovereignty can be delegated as can the right of the legislature to finally fix expenditures for personnel.

There is a monumental need for research on the impact of public employee unionism in the public service. While the 30's were the decade of the industrial worker, the 60's are proving to be the decade of the public employee.

OFFICIAL STUDIES OF PUBLIC EMPLOYEE RELATIONS

City of New York. Report of Tripartite Panel to Improve Municipal Collective Bargaining Procedures, March 31, 1966

State of Connecticut. Report of the Interim Commission to Study Collective Bargaining of Municipalities, 1965

State of Illinois. Report and Recommendations: Governor's Advisory Commission on Labor-Management Policy for Public Employees, March 3, 1967

State of Michigan. Report of Governor's Advisory Committee on Public Employee Relations, February 15, 1967

State of Minnesota. Report by Governor's Committee on Public Employee Labor Relations Laws, 1965

State of New York. Governor's Committee on Public Employee Relations, March 31, 1966

State of Rhode Island. Commission to Study Mediation and Arbitration, General Assembly Report, February, 1966

U. S. President's Task Force on Employee-Management Relations in the Federal Service, November 30, 1961

National Governor's Conference. Report of Task Force on State and Local Government Labor Relations, 1967

State of New Jersey. Public and School Employees' Grievance Procedure Study Commission, January 9, 1968

State of New Mexico. Governor's Task Force to Study Educational Problems in New Mexico, 1968

FACT SHEET NO. 10

MASSACHUSETTS BOARD OF CONCILIATION AND ARBITRATION

FACT FINDING RULES

Pursuant to the rule-making authority of this Board and for the purposes of Section 178J(c)of Chapter 149 of the General Laws, the following rules are established by the Board of Conciliation and Arbitration for the conduct of fact finding proceedings under Chapter 763 of the Acts of 1965 (G.L. Chapter 149, Section 178G through 178N). These rules revoke and replace all fact finding rules previously adopted by this Board.

1. PETITION FOR FACT FINDING--Any written request for the appointment of a fact finder or for the initiation of fact finding proceedings addressed to the Board of Conciliation and Arbitration by any municipal employer and/or eligible employee organization shall be deemed an appropriate petition to initiate fact finding as provided in Section 178J (a). The party filing such a request or petition shall send a copy thereof to the other party to the dispute.

2. INFORMATION TO BE INCLUDED IN PETITION--The request or petition filed with the Board should include the following:

(a) The name and address of the employee organization involved and the name, address and telephone number of its principal representative.

(b) The name and address of the municipal employer involved and the name, address and telephone number of its principal representative.

(c) A description of the designated or recognized collective bargaining unit or units involved and the approximate number of employees in each unit.

(d) A brief statement setting forth the issues in dispute.

3. BOARD INVESTIGATION--Upon receipt of such petition, the Board will cause an investigation to be made by a conciliator or other agent of the Board in order to determine whether within the meaning of the statute, a dispute exists between the municipal employer and employee organization. Such conciliator or other agent shall attempt by mediation to settle the dispute. If he is unable to do so and if he finds that a dispute does in fact exist he shall so advise the Board. A conciliator who makes the initial investigation shall continue to be assigned to the dispute to assist the parties thereto until the dispute is finally resolved or he is specifically relieved of his assignment.

4. SUBMISSION OF FACT FINDING PANEL--Once the Board has determined that a dispute exists, it shall act upon the petition for fact finding by sending a letter to both parties to the dispute (1) advising that the Board has found the existence of a dispute, and (2) listing the names and addresses of a panel of three qualified disinterested persons from which list the parties shall select one person to serve as fact finder.

5. SELECTION OF A FACT FINDER--Once the parties have received the panel from the Board they have five (5) calendar days to select a fact finder. The parties should confer with each other upon this selection and may request the assistance of the conciliator. The parties should agree upon one of the three panel members as the fact finder. However, they may choose a person not listed on the fact finding panel if both parties can agree upon such a person and that person is willing to serve as a fact finder.

6. NOTIFICATION OF FACT FINDER'S SELECTION--When the parties have agreed upon the selection of a fact finder, it is required by law that

they shall notify the Board of their choice.

7. APPOINTMENT OF A FACT FINDER--If the parties have not agreed upon a fact finder within five calendar days of receipt of the panel, the Board shall appoint the person who shall serve as fact finder. This person need not necessarily be one of the three panel members submitted to the parties.

8. LETTER OF APPOINTMENT--When the Board receives notice that the parties have agreed upon the selection of a fact finder, or when the Board makes a direct appointment of a fact finder, the Board shall send a letter to such person advising him of his appointment. Copies of this letter shall be sent to both parties to the dispute and to the conciliator.

9. DISCLOSURE BY FACT FINDER OF DISQUALIFICATION--Prior to accepting his appointment, the fact finder shall disclose to the Board any circumstances likely to create a presumption of bias or which he believes might disqualify him as an impartial fact finder. Upon receipt of such information the Board will immediately disclose it to the parties. If either party declines to waive this presumptive disqualification, the appointment will be revoked and the Board shall appoint some other person to serve as fact finder.

10. FACT FINDER'S AUTHORITY AND RESPONSIBILITY--Once a fact finder has been selected or appointed he shall have the full authority and responsibility of the Commonwealth in the resolution of the dispute and he may call upon the Board for whatever assistance he may need. He shall immediately advise the Board of any work stoppage or any immediate possibility of the same.

11. TIME LIMITATION--The fact finder shall have sixty (60) days from the date he receives his letter of appointment within which to

complete his hearings and file his report. This time limit may be extended by the Board if good cause for an extension can be shown.

12. SCHEDULING OF CONFERENCE & HEARINGS--The fact finder shall establish the time, date and place of each conference and hearing and advise the parties thereto at least 48 hours in advance thereof. Whenever practical, hearings shall be held in the municipality where the dispute exists. The fact finder shall be the sole judge of the schedule and his ruling on time, date, adjournment, continuance or any similar matter shall be final and binding.

13. MEDIATION BY FACT FINDER--The fact finder is authorized to mediate the dispute in which he has been selected or appointed as fact finder and he may schedule mediation sessions for such purposes on the same basis as hearings and conferences. He may also confer individually with each party during mediation without the presence of the other party to the dispute. However, he may not include in his report information obtained in such mediation sessions unless the same is also revealed when both parties are present with the fact finder.

14. OATHS AND SUBPOENAS--The fact finder is authorized by Section 178J (c) of Chapter 149 to administer oaths and he shall be the sole judge as to whether and when witnesses who appear before him or documents received by him shall be under oath. The fact finder does not have subpoena power but he may request the Board to use its subpoena power for hearings conducted by him and the law requires the Board to issue subpoenas upon the request of the fact finder.

15. CONDUCT OF THE HEARING--The fact finder shall preside at the

and shall rule on the admissibility of evidence and be in complete charge of the proceedings. He shall have sole discretion as to who shall be admitted or excluded from the hearing room at each session, and whether or not to permit a stenographic record of the hearings or to permit them to be photographed, recorded, broadcast or televised.

16. COUNSEL OR REPRESENTATIVE OF THE PARTIES--At or before the first conference or hearing conducted by the fact finder each party to the dispute shall furnish the fact finder with a written appearance or appointment of one person as its counsel or representative. Such person or his designee shall have the exclusive authority to present that party's case to the fact finder and the fact finder shall be authorized to deal with such person as the exclusive spokesman and representative for that party throughout the fact finding proceeding or until he receives a written notice from the party revoking such authority and appointing some other person as its counsel or representative. Such counsel or representative shall be bound to respect the rulings of the fact finder and comply with them.

17. ORDER OF PROCEEDINGS--The first hearing shall open with the reading by the fact finder of his letter of appointment and the appearance for each party. The party which first initiated the petition for fact finding will ordinarily present its case first but the fact finder may, in his discretion, vary this procedure. Each party shall be afforded full and equal opportunity for presentation of relevant proofs.

18. WAIVER OF ORAL HEARING--The parties may provide, by written agreement, for the waiver of oral hearings and the fact finder is author-

ized to issue his report on the basis of whatever written statement, or documents are submitted to him under whatever rules or procedure the parties may agree upon.

19. RECORD OF PROCEEDINGS--The fact finder shall keep a record of the date, time and place of each hearing and the names of the counsel and witnesses at each.

20. PROCEEDING IN THE ABSENCE OF A PARTY--Fact finding may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. The fact finder will not however base his report solely upon the default of any party. In the absence of cooperation by a party the fact finder shall determine what evidence he may require for the making of his report and may obtain the same by utilizing the subpoena procedure set out in Rule 14 hereof.

21. EVIDENCE--The parties may offer such evidence as they desire and shall produce such additional evidence as the fact finder may deem necessary to an understanding and determination of the dispute. The fact finder shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the counsel or representative of both parties except where one of the parties is absent in default or has waived its right to be present.

22. INSPECTION--Whenever the fact finder deems it necessary he may make an inspection in connection with the subject matter of the dispute after appropriate notice to the parties who may, if they so desire, be present at such inspection.

23. CLOSING OF HEARINGS--The fact finder shall inquire of both parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, he shall declare the hearings closed and he shall record the date and time thereof. Upon the close of the hearings each party shall have the right to make an oral argument and/or file a brief or briefs with the fact finder, the time limits for which shall be established by the fact finder. Should the parties wish to make oral argument, the party which presented its evidence second ordinarily will argue first and the party which presented its evidence first shall argue last. However, this order of proceeding may be varied by the fact finder.

24. WAIVER OF RULES --Any party who proceeds with any fact finding hearing after knowledge that any provision or requirement of these Rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived his right to object.

25. COST OF FACT FINDING --The cost of fact finding, including fees and expenses will be shared equally by the parties, except where the Labor Relations Commission has ordered fact finding because of failure of a party to bargain in good faith. In that event, the offending party shall pay the full cost of fact finding. The fact finder's fee shall be $125.00 for each day or part thereof upon which he conducts a hearing, conference or mediation session. His fee for each day he devotes to the study and preparation of his report shall also be at the rate of $125.00 per day. Expenses incurred by the fact finder such as travel, lodging, meals, rental of hearing rooms, and other necessary expenses, will

also be paid by the parties. Payment by the parties will be made directly to the fact finder upon receipt of his bill or statement unless other arrangements are agreed upon. The fact finder may submit his entire bill or statement when his services are terminated or he may submit periodic bills and statements during the course of the fact finding proceeding. After the conclusion of his services, he will provide the Board with a record of the costs of the fact finding proceeding.

26. FORM OF REPORT--The fact finder's report shall be in writing and shall contain his findings of fact and recommendations for resolution of all issues in dispute between the parties. It should be set out in logical and understandable order so that when it is released to the public, all citizens of the municipality interested in the matter may be able to know the facts of the dispute and understand what the fact finder has recommended to resolve the dispute. Each recommendation should be numbered or lettered so that the parties can more readily make reference to the same when advising the Board of its action thereon as required in Rule 29 hereof.

27. SERVICE OF REPORT--On or before the last day of the time specified for completion of hearings and filing his report, (Rule 11 hereof) the fact finder shall submit five (5) copies of his report to the Board and one copy to the Counsel or representative of each party to the dispute. It is the fact finder's responsibility to ascertain that each party's counsel or representative has received a copy of the report and he should be prepared to file an affidavit to that effect if the Board so requests.

28. DISPOSITION OF REPORT--The parties to the dispute shall consider

the report as a basis for resolution of their dispute and shall resume negotiations as soon as possible after receipt thereof. The conciliator will be available to assist the parties at this point in their effort to agree upon a contract.

29. ACTION ON REPORT--Within thirty (30) days of receipt of the fact finder's report, each party shall advise the Board in writing what action, if any, it has taken concerning each recommendation contained therein. If the dispute has been resolved by the execution of a contract between the parties a letter to that effect sent to the Board will comply with the requirement of this rule.

30. PUBLICATION OF REPORT--At the time the fact finder's report is submitted to the parties, or at any time thereafter, the fact finder may release it to the news media, a publisher, or any other person if he wishes. Those copies of the report submitted to the Board will be treated as public records and will be open to inspection by any interested person and may be published in whole or in part by any news media or publishing service.

31. PRELIMINARY REPORT--At any time prior to the filing of his report, the fact finder may, if he wishes, render a preliminary report to the parties in any manner he sees fit. This preliminary report shall not be subject to the same requirements as the report he is required to file under Section 178J (c) of Chapter 149 and these Rules.

32. TERMINATION OF FACT FINDING--The fact finder shall have no further authority or responsibility in connection with the dispute once his report is filed with the Board unless he receives a new letter of appointment from the Board or both parties to the dispute seek his assistance. If both parties to the dispute agree upon settlement of all issues in dispute

at any time after a fact finder has been appointed they shall advise the Board and the Board may vacate the appointment by written notice to the fact finder. If the fact finder should resign, die, withdraw, refuse or be unable to perform his duties as such, the Board shall, on proof satisfactory to it, vacate the appointment and appoint a new fact finder.

APPENDIX B

NEGOTIATION STATUTES FROM SELECTED STATES

California	Mandatory Right to Meet and Confer; Proportional Representation; All Public Employees Covered
Connecticut	Mandatory Right to Bargain; Certificated Personnel Only; Local Optional Unit Determination; Binding Arbitration on Elections; Mediation and Advisory Arbitration by State Board of Education
Florida	Permissive Right to Meet and Confer
Rhode Island	Mandatory Right to Bargain; Certificated Personnel Only; State Labor Relations Board Administers Representation Questions; Mediation may be by State Board of Education, Director of Labor, or other source; Binding Arbitration of Matters Not Involving Expenditure of Money
Wisconsin	Oldest Law Covering Teachers With Other Municipal Employees; Fact Finding; Unfair Labor Practices; Wisconsin Employment Relations Board Administers

CALIFORNIA

California Statutes 1965, Chap. 2041

Section 1. Section 3501 of the Government Code is amended to read:

3501. As used in this chapter:

(a) "Employee organization" means any organization which includes employees of a public agency and which has as one of its primary purposes representing such employees in their relations with that public agency.

(b) Except as otherwise provided in this subdivision, "public agency" means the State of California, every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation and every town, city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not. As used in this chapter, "public agency" does not mean a school district or a county board of education or a county superintendent of schools or a personnel commission in a school district having a merit system as provided in Chapter 3 (commencing with Section 13580) of Division 10 of the Education Code.

(c) "Public employee" means any person employed by any public agency excepting those persons elected by popular vote or appointed to office by the Governor of this state.

Section 2. Article 5 (commencing with Section 13080) is added to Chapter 1 of Division 10 of Part 2 of the Education Code, to read:

(California Con't.)

Article 5. Employee Organizations

13080. It is the purpose of this article to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice and be represented by such organizations in their professional and employment relationships with public school employers and to afford certificated employees a voice in the formulation of educational policy. Nothing contained herein shall be deemed to supersede other provisions of this code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations. This article is intended, instead, to strengthen tenure, merit, civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees and the public school employers by which they are employed.

13081. As used in this article:

(a) "Employee organization" means any organization which includes employees of a public school employer and which has as one of its primary purposes representing such employees in their relations with that public school employer.

(b) "Public school employer" means a school district, a county board of education, a county superintendent of schools, or a personnel commission of a school district which has a merit system as provided in Chapter 3 of this division.

(c) "Public school employee" means any person employed by any public school employer excepting those persons elected by popular vote or appointed by the Governor of this state.

13082. Except as otherwise provided by the Legislature, public school employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public school employees shall also have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public school employer.

13083. Employee organizations shall have the right to represent their members in their employment relations with public school employers. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this section shall prohibit any employee from appearing in his own behalf in his employment relations with the public school employer.

13084. The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to wages, hours and other terms and conditions of employment.

13085. A public school employer or the governing board thereof, or such administrative officer as it may designate, shall meet and confer

(California Con't.)
with representatives of employee organizations upon request with regard to all matters relating to employment conditions and employer-employee relations, and in addition, shall meet and confer with representative of employee organizations representing certificated employees upon request with regard to all matters relating to the definition of educational objectives, the determination of the content of courses and curricula, the selection of textbooks, and other aspects of the instructional program to the extent such matters are within the discretion of the public school employer or governing board under the law. The designation of an administrative officer as provided herein shall not preclude an employee organization from meeting with, appearing before, or making proposals to the public school employer at a public meeting if the employee organization requests such a public meeting.

Notwithstanding the provisions of Sections 13082 and 13083, in the event there is more than one employee organization representing certificated employees, the public school employer or governing board thereof shall meet and confer with the representatives of such employee organizations through a negotiating council with regard to the matters specified in this section, provided that nothing herein shall prohibit any employee from appearing in his own behalf in his employment relations with the public school employer. The negotiating council shall have not more than nine or less than five members and shall be composed of representatives of those employee organizations who are entitled to representation on the negotiating council. An employee organization representing certificated employees shall be entitled to appoint such

(California Con't.)
number of members of the negotiating council as bears as nearly as practicable the same ratio to the total number of members of the negotiating council as the number of members of the employee organization bears to the total number of certificated employees of the public school employer who are members of employee organizations representing certificated employees. Each employee organization shall adopt procedures for selecting its proportionate share of members of the negotiating council, provided that such members shall be selected no later than October 31 of each school year. Within 10 days after October 31, the members of the negotiating council shall meet and select a chairman, and thereafter such negotiating council shall be legally constituted to meet and confer as provided for by the provisions of this article. Employee organizations shall exercise the rights given by Section 13083 through the negotiating council provided for in this section.

13086. Public school employers and employee organizations shall not interfere with, intimidate, restrain, coerce or discriminate against public school employees because of their exercise of their rights under Section 13082.

13087. A public school employer shall adopt reasonable rules and regulations for the administration of employer-employee relations under this article.

Such rules and regulations shall include provision for verifying the number of certificated employees of the public school employer who are members in good standing of an employee organization on the date of such verification, and where a negotiating council is required by

(California Con't.)
Section 13085, for the size of the negotiating council. The public school employer may require an employee organization to submit any supplementary information or data considered by the public school employer to be necessary to the verification of the number of members in an employee organization and such information or data shall be submitted by the organization within 10 days after request, provided that membership lists, if requested, shall not be used as a means of violating Section 13086. In addition, such rules may include provisions for (a) verifying the official status of employee organization officers and representatives, (b) access of employee organization officers and representatives to work locations, (c) use of official bulletin boards and other means of communication by employee organizations, (d) furnishing complete and accurate nonconfidential information pertaining to employment relations to employee organizations and (e) such other matters as are necessary to carry out the purposes of this article.

13088. The enactment of this article shall not be construed as making the provisions of Section 923 of the Labor Code applicable to public school employees.

(Statutory Citation: West's Annotated California Codes: Government Code, sec. 3501; Education Code, secs. 13080--13088.)

CONNECTICUT

AN ACT CONCERNING THE RIGHT OF TEACHERS' REPRESENTATIVES TO NEGOTIATE WITH BOARDS OF EDUCATION

Public Act 298 of 1965, as
amended by Public Act 752
of 1967

(Changes underlined)

Section 10-153b. Selection of Teachers' Representatives. (a) Any organization or organizations of certificated professional employees of a town or regional board of education may be selected in the manner provided herein for the purpose of representation in negotiations with such boards with respect to salaries and all other conditions of employment. A representative organization may be designated or elected for such purpose by a majority of all employees below the rank of superintendent in the entire group of such employees of a board of education or school district or by a majority of such employees in separate units as described in subsection (b). The employees in any of the three units described may designate an organization to represent them by filing, during the period between October first and April fifteenth of any school year, with the board of education a petition which requests recognition of such organization for purposes of negotiation under this act and is signed by a majority of the employees in such unit. Within three school days next following the receipt of such petition, such board shall post a notice of such request for recognition and mail a copy thereof to the secretary of the state board of education. Such notice shall state the name of the organization designated by the petitioners, the unit to be

(Connecticut Con't.)
represented and the date of receipt of such petition by the board. "To post a notice" as used in this act means to post a copy of the indicated material on each bulletin board for teachers in every school in the school district, or if there are no such bulletin boards, to give a copy of such information to each employee. If no petition which requests a teacher referendum and is signed by twenty per cent of the employees in a unit is filed in accordance with the provisions of subsection (b) with the secretary within the thirty days next following the date on which the board of education posts notice of the designation petition, such board shall recognize the designated organization as the exclusive representative of the employees in the unit for which it was so designated for a period of one year or until a teacher representation referendum has been held under this act, whichever occurs later. If a petition complying with the provisions of subsection (b) is filed within such period, the town or regional board shall not recognize any organization so designated until an election has been held pursuant to this act to determine which organization shall represent such unit. (b) All certificated professional personnel below the rank of superintendent, other than temporary substitutes, employed and engaged either (i) in positions requiring a teaching or special services certificate or (ii) in positions requiring an administrative or supervisory certificate, may select a separate representative by a secret ballot decision of a majority of the personnel voting in each of the two said categories. If twenty per cent or more of the certificated professional employees of a town or regional board of education below the rank of superintendent

(Connecticut Con't.)
in either the entire group or in the separate units described in (i) or (ii) above file during the period between October first and the following April fifteenth of any school year with the secretary of the state board of education a petition requesting that a teacher representation referendum be held to elect an organization for the purpose of representation, said secretary shall file notice of such petition with the town or regional board of education on or before the third school day following receipt of the petition. Said secretary shall not divulge the names on such petition or any petition filed with him pursuant to this act to anyone except upon court order. Such notice shall state the name of the petitioning group, the unit for which a referendum is sought and the date the petition was filed. Within three school days after receipt of such notice, the town or regional board of education shall post a copy of the notice. Any organization having an interest in representing teachers in any of the units authorized by this section may intervene within ten school days after the board posts notice of such petition by filing with the secretary of the state board of education a petition signed by ten per cent of the employees of such unit. The secretary shall notify the town or regional board on or before the third day following receipt of the intervening petition, and such board shall post notice of the intervening petition within three days following receipt thereof. No intervening petition shall be required from any incumbent organization previously designated by the board or elected by referendum and such incumbent organization shall be listed on the ballot if a petition for a teacher representation referendum is filed. The town or regional board, the petitioning organization, the incumbent organization,

(Connecticut Con't.)
if any, and any intervening organization may agree on an impartial person or agency to conduct such a referendum consistent with the other provisions of this section, provided not more than one such referendum shall be held to elect an organization to represent the employees in any such unit in any one school year. In the event of a disagreement on the agency to conduct the referendum, the method shall be determined by the board of arbitration selected in accordance with section 10-153c. An election shall be held to determine the representatives of the appropriate unit or units, as the case may be, between twenty and forty-five days after the first petition requesting a referendum is filed with the secretary of the state board of education. The town or regional board of education shall pay the cost incurred by the impartial person or agency selected to conduct the referendum. (c) The representative designate or elected as provided in subsection (a) or (b) of this section shall be the exclusive representative of all the employees in such unit for the purposes of negotiating with respect to salary schedules and personnel policies relative to employment of certificated professional employees, provided any certificated professional employee or group of employees shall have the right at any time to present any grievance to such persons as the town or regional board of education shall designate for that purpose.

Section 10-153c. Disputes as to Election. Any dispute as to the eligibility of personnel to vote in an election, or the agency to conduct the election required by section 10-153b shall be submitted to a board of arbitration for a binding decision with respect thereto. If there are two or more organizations seeking to represent employees, each may name

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an arbitrator within five days after receipt of a request for arbitration made in writing by any party to the dispute. Such arbitrators, together with an equal number named by the board of education, shall select an additional impartial member thereof within five days after the arbitrators have been named by the parties. The impartial agency selected to conduct the election shall decide all procedural matters relating to such election and shall conduct such election fairly. Each organization shall have, during the election process, equal access to school mail boxes and facilities.

Section 10-153d. Duty to Negotiate. The town or regional board of education and the organization designated or elected as the exclusive representative for the appropriate unit, through designated officials or their representatives, shall have the duty to negotiate with respect to salaries and other conditions of employment about which either party wishes to negotiate, and such duty shall include the obligation of such board of education to meet at reasonable times, including meetings appropriately related to the budget-making process, and confer in good faith with respect to salaries and other conditions of employment, or the negotiation of an agreement, or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation shall not compel either party to agree to a proposal or require the making of a concession. The town or regional board of education, and its representatives, agents and superintendents shall not interfere, restrain or coerce employees in derogation of the rights guaranteed by sections 10-153b to 10-153f,

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inclusive, and in the absence of any recognition or certification as the exlusive representative as provided by section 10-153b, all organizations seeking to represent members of the teaching profession shall be accorded equal treatment with respect to access to teachers, principals, members of the board of education, records, mail boxes and school facilities and participation in discussions with respect to salaries and other conditions of employment.

Section 10-153e. Strikes Prohibited. No certificated professional employee shall, in an effort to effect a settlement of any salary disagreement with his employing board of education, engage in any strike or concerted refusal to render services.

Section 10-153f. Mediation and Arbitration of Disagreements. (a) In the event of any disagreement as to the terms and conditions of employment between the board of education of any town or regional school district and the organization or organizations of certificated professional employees of said board, selected for the purpose of representation, the disagreement shall be submitted to the secretary of the state board of education for mediation. The parties shall meet with him or his agents and provide such information as he may require. The secretary may recommend a basis for settlement but such recommendations shall not be binding upon the parties. (b) In the event mediation by the secretary of the state board of education provided by subsection (a) of this section fails to resolve the disagreement, either party may submit the unresolved issue or issues to an impartial board of three arbitrators. Each party to the dispute shall designate one member of the board and the

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arbitrators so selected shall select the third. The decision of such board, after hearing all the issues, shall be advisory and shall not be binding upon the parties to the dispute. If the parties are unable to agree upon a third arbitrator, either party may petition the superior court or, if the court is not in session, a judge thereof, to designate the third arbitrator in the manner provided by section 52-411 of the general statutes or, if either party refuses to arbitrate, an action to compel arbitration may be instituted in the manner provided by section 52-410 of the general statutes.

(Statutory Citation: Connecticut General Statutes Annotated, Title 10, Secs. 10-153b--10-153f.)

FLORIDA

1965

CHAPTER 65-239

230.22 POWERS AND DUTIES OF COUNTY BOARD. The county board, after considering recommendation submitted by the county superintendent, shall exercise the following general powers:

(1) DETERMINE POLICIES. -The county board shall determine and adopt such policies as are deemed necessary by it for the efficient operation and general improvement of the county school system. In arriving at a determination of policies affecting certificated personnel, the county board may appoint or recognize existing committees composed of members of the teaching profession, as defined in the professional teaching practices act, sections 231.54-59, Florida Statutes. When such committees are involved in the consideration of policies for resolving problems or reaching agreements affecting certificated personnel the committee membership shall include certificated personnel representing all work levels of such instructional and administrative personnel as defined in the school code.

(Statutory citation: Florida Statutes Annotated, Chapter 230, sec. 230.22 (1).)

RHODE ISLAND

Chapter 146 of 1966:

AN ACT IN AMENDMENT OF AND IN ADDITION TO TITLE 28 OF THE GENERAL LAWS ENTITLED "LABOR AND LABOR RELATIONS," AS AMENDED, AND PROVIDING FOR THE SETTLEMENT OF DISPUTES BETWEEN CERTIFIED PUBLIC SCHOOL TEACHERS AND SCHOOL COMMITTEES

It is enacted by the General Assembly as follows:

Section 1. Title 28 of the general laws entitled "Labor and labor relations," as amended, is hereby further amended by adding thereto the following chapter:

CHAPTER 9.3

Arbitration of School Teacher Disputes

28-9. 3-1. Declaration of policy--Purpose. In pursuance of the duty imposed upon it by the constitution to promote public schools and to adopt all means necessary and proper to secure to the people the advantages and opportunities of education, the general assembly hereby declares that it recognizes teaching as a profession which requires special educational qualifications and that to achieve high quality education it is indispensable that good relations exist between teaching personnel and school committees.

It is hereby declared to be the public policy of this state to accord to certified public school teachers the right to organize, to be represented, to negotiate professionally and to bargain on a collective basis with school committees covering hours, salary, working conditions and other terms of professional employment, provided, however, that nothing contained in this chapter shall be construed to accord to certified public school teachers the right to strike.

28-9. 3-2. Right to organize and bargain collectively. The

(Rhode Island Con't.)
certified teachers in the public school system in any city, town or regional school district, shall have the right to negotiate professionally and to bargain collectively with their respective school committees and to be represented by an association or labor organization in such negotiation or collective bargaining concerning hours, salary, working conditions and all other terms and conditions of professional employment. For purposes of this chapter, certified teachers shall mean certified teaching personnel employed in the public school systems in the state of Rhode Island engaged in teaching duties. Superintendents, assistant superintendents, principals, and assistant principals are excluded from the provisions of this act.

28-9. 3-3. Recognition of bargaining agent. The association or labor organization selected by the certified public school teachers in the public school system in any city, town, or regional school district, shall be recognized by the school committee of such city, town or district, as the sole and exclusive negotiating or bargaining agent for all of the said public school teachers of the city, town, or regional school district unless and until recognition of such association or labor organization is withdrawn or changed by vote of the certified public school teachers after a duly conducted election, held pursuant to the provisions of this chapter. An association or labor organization or the school committee may designate any person or persons to negotiate or bargain in its behalf.

28-9.3-4. Obligation to bargain. It shall be the obligation of the school committee to meet and confer in good faith with the representative or representatives of the negotiating or bargaining agent within ten (10) days after receipt of written notice from said agent of the request for a meeting for negotiating or collective bargaining purposes. This obligation shall include the duty to cause any agreement resulting from negotiations or bargaining to be reduced to a written contract, provided that no such contract shall exceed the term of three (3) years. Failure to negotiate or bargain in good faith may be complained of by either the negotiating or bargaining agent or the school committee to the state labor relations board which shall deal with such complaint in the manner provided in chapter 28-7 of this title.

28-9. 3-5. Determination of negotiating agent. Elections. The state labor relations board upon the written petition for an election signed by not less than twenty percent (20%) of the certified public school teachers of such city, town or regional school district, indicating their desire to be represented by a particular association or organization or to change or withdraw recognition shall forthwith call and hold an election at which all such certified public school teachers shall be entitled to vote. The association or organization selected by a majority of said certified public school teachers voting in said election shall be certified by the state labor relations board as the exclusive negotiating or bargaining representative of such certified public school teachers of such city, town or regional school district in any matter within the provisions of this chapter. Upon written petition to intervene in the election signed by not less than fifteen percent (15%)

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of such certified public school teachers indicating their desire to be represented by a different or competing association or organization, the name of such different or competing association or organization shall be placed on the same ballot. If the majority of those voting desire no representation, no association nor labor organization shall be recognized by the school committee as authorized to negotiate or bargain in behalf of its certified public school teachers, and in all elections there shall be provided on the ballot an appropriate designation for such a choice.

28-9. 3-6. Supervision of elections. The state labor relations board shall prescribe the method of petitioning for an election, the manner, place and time of conducting such election, and shall supervise all such elections to insure against interference, restraint, discrimination, or coercion from any source. Complaints of interference, restraint, discrimination or coercion shall be heard and dealt with by the labor relations board as provided in chapter 28-7 of this title. All unfair labor practices enumerated in section 28-7-13 are declared to be unfair labor practices for a school committee.

28-9. 3-7. Certification of negotiating agent. No association nor organization shall be certified initially as the representative of certified public school teachers except after an election. Teachers shall be free to join or to decline to join any association or organization regardless of whether it has been certified as the exclusive representative of certified public school teachers. If new elections are not held

(Rhode Island Con't.)
after an association or labor organization is certified, such association or organization shall continue as the exclusive representative of the certified public school teachers from year to year until recognition is withdrawn or changed as provided in section 28-9. 3-5. Elections shall not be held more often than once each twelve months and must be held at least thirty (30) days before the expiration date of any employment contract.

28-9. 3-8. Request for negotiation or bargaining. Whenever salary or other matters requiring appropriation of money by any city, town or regional school district are to be included as matter of negotiation or collective bargaining conducted under the provisions of this chapter, the negotiating or bargaining agent must first serve written notice of request for negotiating or collective bargaining on the school committee at least one hundred twenty (120) days before the last day on which money can be appropriated by the city or town to cover the first year of the contract period which is the subject of the negotiating or bargaining procedure.

28-9. 3-9. Unresolved issues submitted to mediation or arbitration. In the event that the negotiating or bargaining agent and the school committee are unable within thirty (30) days from and including the date of their first meeting, to reach an agreement on a contract, either of them may request mediation and conciliation upon any and all unresolved issues by the state department of education, the director of labor or from any other source. If mediation and conciliation fail or are not

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requested, at any time after said 30 days either party may request that any and all unresolved issues shall be submitted to arbitration by sending such request by certified mail, postage pre-paid to the other party, setting forth the issues to be arbitrated.

28-9. 3-10. Arbitration board-Composition. Within seven (7) days after arbitration has been requested as provided in section 28-9. 3-9, the negotiating or bargaining agent and the school committee shall each select and name one (1) arbitrator and shall immediately thereafter notify each other in writing of the name and address of the person so selected. The two (2) arbitrators so selected and named shall, within ten (10) days from and after their selection agree upon and select and name a third arbitrator. If within said ten (10) days the arbitrators are unable to agree upon the selection of a third arbitrator, such third arbitrator shall be selected in accordance with the rules and procedure of the American Arbitration Association. If the negotiating or bargaining agent agrees with the school committee to a different method of selecting arbitrators, or to a lesser or greater number of arbitrators, or to any particular arbitrator, or if they agree to have the state board of education designate the arbitrator or arbitrators to conduct the arbitration, such agreement shall govern the selection of arbitrators, provided, however, that if the state board of education shall be unwilling or shall fail to designate the arbitrator or arbitrators, an alternative method of selection shall be used. The third arbitrator, whether selected as a result of agreement between the

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(Rhode Island Con't.)
two arbitrators previously selected, or selected under the rules of the American Arbitration Association or by the state board of education or by any other method, shall act as chairman.

28-9. 3-11. Hearings. The arbitrators shall call a hearing to be held within ten (10) days after their appointment and shall give at least seven (7) days' notice in writing to the negotiating or bargaining agent and the school committee of the time and place of such hearing. The hearing shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other data deemed relevant by the arbitrators may be received in evidence. The arbitrators shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues presented to them for determination. Both the negotiating or bargaining agent and the school committee shall have the right to be represented at any hearing before said arbitrators by counsel of their own choosing. The hearing conducted by the arbitrators shall be concluded within ten (10) days after the conclusion of the hearings, the arbitrators shall make written findings and a written opinion upon the issues presented, a copy of which shall be mailed or otherwise delivered to the negotiating or bargaining agent or its attorney or other designated representative and the school committee.

28-9. 3-12. Appeal from decision. The decision of the arbitrators shall be made public and shall be binding upon the certified public school teachers and their representative and the school committee on all matters not involving the expenditure of money. The decision of the arbitrators shall be final and no appeal shall lie therefrom except on the ground that the decision was procured by fraud or that it violates the law, in which case appeals shall be to the superior court. The school committee shall within three (3) days after it receives the decision send a true copy thereof by certified or registered mail, postage prepaid, to the department or agency responsible for the preparation of the budget and to the agency which appropriates money for the operation of the schools in the city, town or regional school district involved, if said decision involves the expenditure of money.

28-9. 3-13. Fees and expenses of arbitration. Fees and necessary expenses of arbitration shall be borne equally by the negotiating or bargaining agent and the school committee.

28-9. 3-14. Plural and singular application. Whenever the word arbitrators is used herein it shall also mean arbitrator where applicable.

28-9. 3-15. Severability of provisions. If any provision of this chapter, or application thereof to any person or circumstances, is held unconstitutional or otherwise invalid, the remaining provisions of this chapter and the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

28-9. 3-16. Short title. This chapter may be cited as the school teachers' arbitration act.

Section 2. This act shall taken effect upon its passage.

[The bill was signed by Governor Chafee May 11, 1966.]

(Statutory Citation: General Laws of Rhode Island, 1956, Title 28, secs. 28-9. 3-1--28-9. 3-16.)

WISCONSIN

STATUTES RELATING TO BARGAINING IN MUNICIPAL EMPLOYMENT

Chapter 663, Laws of 1961:

AN ACT to create 111.70 (1) (c) and (4) of the statutes, relating to bargaining in municipal employment.

The people of the state of Wisconsin, represented, in senate and assembly, do enact as follows:

111.70 MUNICIPAL EMPLOYMENT

1. Definitions. When used in this section:

(a) "Municipal employer" means any city, county, village, town, metropolitan sewerage district, school district or any other political subdivision of the state.

(b) "Municipal employe" means any employe of a municipal employer except city and village policemen, sheriff's deputies, and county traffic officers.

(c) "Board" means the Wisconsin employment relations board.

2. Rights of municipal employes. Municipal employes shall have the right of self-organization, to affiliate with labor organizations of their own choosing and the right to be represented by labor organizations of their own choice in conferences and negotiations with their municipal employers or their representatives on questions of wages, hours and conditions of employment, and such employes shall have the right to refrain from any and all such activities.

(Wisconsin Con't.)

3. Prohibited practices.

(a) Municipal employers, their officers and agents are prohibited from:

(1) Interfering with, restraining or coercing any municipal employe in the exercise of the rights provided in sub. (2).

(2) Encouraging or discouraging membership in any labor organization, employe agency, committee, association or representation plan by discrimination in regard to hiring, tenure or other terms or conditions of employment.

(b) Municipal employes individually or in concert with others are prohibited from:

(1) Coercing, intimidating or interfering with a municipal employe in the enjoyment of his legal rights including those set forth in sub. (2).

(c) It is a prohibited practice for any person to do or cause to be done, on behalf or in the interest of any municipal employer or employe, or in connection with or to influence the outcome of any controversy, as to employment relations, any act prohibited by pars. (a) and (b).

4. Powers of the Board. The board shall be governed by the following provisions relating to bargaining in municipal employment:

(a) Prevention of prohibited practices. Section 111.07 shall govern procedure in all cases involving prohibited practices under this subchapter.

(b) Mediation. The board may function as a mediator in

(Wisconsin Con't.)
disputes between municipal employes and their employers upon the request of both parties.

(d)[1] Collective bargaining units. Whenever a question arises between a municipal employer and a labor union as to whether the union represents the employes of the employer, either the union or the municipality may petition the board to conduct an election among said employes to determine whether they desire to be represented by a labor organization. Proceedings in representation cases shall be in accordance with Ss. 111.02 (6) and 11.05 insofar as applicable, except that where the board finds that a proposed unit includes a craft the board shall exclude such craft from the unit. The board shall not order an election among employes in a craft unit except on separate petition initiating representation proceedings in such craft unit.

(e) Fact finding. Fact finding may be initiated in the following circumstances:

(1) If after a reasonable period of negotiation the parties are deadlocked, either party or the parties jointly may initiate fact finding;

(2) Where an employer or union fails or refuses to meet and negotiate in good faith at reasonable times in a bona fide effort to arrive at a settlement.

(f) Same. Upon receipt of a petition to initiate fact finding, the board shall make an investigation and determine whether or not the condition set forth in par. (e) 1 or 2 has been met and shall

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[1] No section (c) shown in statute

(Wisconsin Con't.)
certify the results of said investigation. If the certification requires that fact finding be initiated, the board shall appoint from a list established by the board a qualified disinterested person, or three-member panel when jointly requested by the parties, to function as a fact finder.

(g) Same. The fact finder may establish dates and place of hearings which shall be where feasible in the jurisdiction of the municipality involved and shall conduct said hearings pursuant to rules established by the board. Upon request, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearings, the fact finder shall make written findings of facts and recommendations for solution of the dispute and shall cause the same to be served on the municipal employer and the union.

(h) Parties.

(1) Proceedings to prevent prohibitive practices. Any labor organization or any individual affected by prohibited practices herein is a proper party to proceedings by the board to prevent such practice under this subchapter.

(2) Fact-finding cases. Only labor unions which have been certified as representative of the employes in the collective bargaining unit or which the employer has recognized as the representative of said employes shall be proper parties in initiating fact finding proceedings. Cost of fact-finding proceedings shall be divided equally between said labor organization and the employer.

(i) Agreements. Upon the completion of negotiation with a labor organization representing a majority of the employes in a

(Wisconsin Con't.)
collective bargaining unit, if a settlement is reached, the employer shall reduce the same to writing either in the form of an ordinance, resolution or agreement. Such agreement may include a term for which it shall remain in effect not to exceed one year. Such agreements shall be binding on the parties only if express language to that effect is contained therein.

(j) Personnel relations in law enforcement. In any case in which a majority of the members of a police or sheriff or county traffic officer department shall petition the governing body for changes or improvements in the wages, hours or working conditions and designates a representative which may be one of the petitioners or otherwise, the procedures in pars. (e) to (g) shall apply. Such representative may be required by the board to post a cash bond in an amount determined by the board to guarantee payment of one half of the costs of fact finding.

(k) Paragraphs (e) to (g) shall not apply to discipline or discharge cases under civil service provisions of a state statute or local ordinance.

(l) Nothing contained in this subchapter shall constitute a grant of the right to strike by any county or municipal employe and such strikes are hereby expressly prohibited.

(m) The board shall not initiate fact-finding proceedings in any case when the municipal employer through ordinance or otherwise has established fact-finding procedures substantially in compliance with this subchapter.

(Statutory Citation: Wisconsin Statutes Annotated, Title 13, Chapter III, secs. 111.70 (1)--111.70 (4)(m).)

MEMORANDUM

TO: ECS Commissioners
DATE: June 3, 1968

FROM: Wendell H. Pierce
Executive Director

SUBJECT: Draft of Model Legislation on Teacher Negotiations

As you are aware, the subject of teacher negotiations is extremely complex and not yet precisely defined. The development of model legislation on such a topic is undertaken ordinarily by organizations and agencies set up and staffed for that purpose, and then only after exhaustive study and analysis--a two-year task in the opinion of the National Conference of Commissions on Uniform State Laws.

The press of time precluded the depth study and analysis accepted as necessary in preparing model acts such as the attached legislation which therefore must be read with an especially critical eye.

We also need to be aware of the fact that while state government officials are accustomed to working with model legislation, the educational community, for the most part, is not. Therefore, it must be made clear that the model act presented here represents neither the policy of individual states nor of the Commission. Rather, this document should be viewed as a needed first step in the development of alternative forms of such legislation.

Questions which well may be raised include but are not limited to the following:

Section II, pg. 2	Does the phrase ". . .all terms and conditions of professional employment. . ." mean that "everything is negotiable"?
Section II, pg. 2	Since only those ". . .engaged in actual classroom teaching duties. . ." and certain specified administrative personnel are mentioned in the act, what provision is to be made for librarians, guidance counselors, supervisors, and the like?

Section IV, pg. 3	Is the phrase requiring school boards to ". . .meet and confer. . ." to be taken as a requirement actually to negotiate in good faith?
Section VIII, pg. 5	Does the 120-day advance limit on proposals ". . .requiring appropriation of money. . ." make it impossible to negotiate in time to set salaries in the spring for contracts effective in the fall?
Section IX, pg. 6	Does the prescribed progression from negotiation to mediation to arbitration preclude the use of formal fact-finding procedures?
Section XI, pg. 8	Is the provision for binding arbitration consistent with the constitutional authority of local school boards?
Section XII, pg. 9	Does the provision for individual employees to ". . .represent themselves. . ." directly in employment relations with school boards negate the principle of having a single bargaining agent?

Further clarification of the provisions of this act will, of course, be necessary. These clarifications, requiring appropriate rewording, should emerge from discussion of this proposed act at the level of the individual states.

Model: Public School Employees Negotiating and Bargaining Act

(appropriate state heading and form)

An act providing for the settlement of disputes between certified public school teachers and school governing bodies, and for other purposes.

BE IT ENACTED: (etc.)

SECTION I: DECLARATION OF POLICY AND PURPOSE

In pursuance of the duty imposed upon it by the constitution to provide a system of free public schools and to adopt all means necessary and proper to secure to the people the advantages and opportunities of education, the legislature (or other appropriate body) hereby declares that it recognizes teaching as a profession which requires special educational qualifications and that to achieve high quality education it is indispensible that good relations exist between teaching personnel and school governing boards. It is hereby declared to be the policy of the State of (_______________) to accord to certified public school teachers the right to organize, to be represented, to negotiate professionally, and to bargain on a collective basis with school committees covering hours, salary, working conditions, and other terms of professional employment; provided, however, that nothing contained herein shall be construed to accord to certified public school teachers the right to strike.

SECTION II: RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY

The certified teachers in the public school system in any school district shall have the right to negotiate professionally and to bargain collectively with their school boards and to be represented by an association or labor organization in such negotiation or collective bargaining concerning hours, salary, working conditions, and all terms and conditions of professional employment. For the purposes of this act, certified teachers shall mean certified teachers and personnel employed in the public school systems in the State of (________________) engaged in actual classroom teaching duties. Superintendents, principals, and assistant principals are excluded from the provisions of this act.

SECTION III: RECOGNITION OF BARGAINING AGENT

The association or labor organization selected by the certified public school teachers in the public school system in any school district shall be recognized by the school board of such district as the sole and exclusive negotiating or bargaining agent for all of the said public school teachers in such school district, unless and until recognition of such association or labor organization is withdrawn or changed by vote of the certified public school teachers after a duly-conducted election held pursuant to the provisions of this act.

An association or labor organization or the school board may designate a person or persons to negotiate or bargain in its behalf.

SECTION IV: OBLIGATION TO BARGAIN

It shall be the obligation of the school board to meet and confer in good faith with the representative or representatives of the negotiating or bargaining agent within ten (10) days after receipt of any written notice from said agent of the request for a meeting for negotiating or collective bargaining purposes. This obligation shall include the duty to cause any agreement resulting from negotiations or bargaining to be reduced to a written contract. Provided that no such written agreement or contract shall extend for a term longer than three (3) years. Failure to negotiate or bargain in good faith may be complained of by either the negotiating or bargaining agent or the school board to the appropriate state agency, as designated by the state legislature, which shall deal with such complaint in the manner provided in (statute providing for a writ of mandate or by injunction issued by the appropriate court).

SECTION V: DETERMINATION OF NEGOTIATING OR BARGAINING AGENT. ELECTIONS.

The appropriate state agency, as designated by the state legislature, upon written petition for an election signed by not less than fifteen per cent (15%) of the certified public school teachers of a school district, indicating their desire to be represented by a particular association or labor organization or to change or withdraw recognition from a particular association or labor organization shall forthwith call and hold an election at which all certified public school teachers in such district shall be entitled to vote. The association or labor organization selected by a majority of said certified public school teachers voting in said election shall be certified by the appropriate state agency as the exclusive negotiating or bargaining representative of such certified public school teachers of such school district in any matter relating to the provisions of this act. Upon written petition to intervene in the election signed by ten per cent (10%) of such certified public school teachers indicating their desire to be represented by a different or competing association or labor organization, the name of such different association or labor organization shall be placed on the same ballot. If the majority of those voting desire no representation, no association nor labor organization shall be recognized by the school board as authorized to negotiate in behalf of its certified public school teachers, and in all elections there shall be provided on the ballot appropriate designation for such choice.

SECTION VI: SUPERVISION OF ELECTIONS

The appropriate state agency shall prescribe by regulation the method of petitioning for an election, the manner, place, and time of conducting such an election, and shall supervise all such elections to insure against interference, restraint, discrimination, or coercion from any source. Complaints of interference, restraint, discrimination, or coercion shall be heard and dealt with by the appropriate state agency.

SECTION VII: CERTIFICATION OF NEGOTIATING OR BARGAINING AGENT

No association nor labor organization shall be certified initially as the representative of certified public school teachers except after an election. Teachers shall be free to join any association or labor organization regardless of whether it has been certified as the exclusive representative of certified public school teachers. If new elections are not held after an association or labor organization is certified, such association or labor organization shall continue as the exclusive representative of the certified public school teachers from year to year until recognition is withdrawn or changed as provided in Sections V and VI of this act. Elections shall not be held more often than once each twelve months and must be held at least thirty (30) days before the annual expiration date of employment contracts in the school districts.

SECTION VIII: REQUEST FOR NEGOTIATION OR BARGAINING

Whenever salary or other matters requiring appropriation of money by any school district are to be included as matters for negotiation or collective bargaining under the provisions of this act, the negotiating or bargaining agent must first serve written notice of request for negotiating or collective bargaining, concerning salary or other matters requiring appropriation of moneys, on the school board at least one hundred twenty (120) days before the last day on which money can be appropriated to cover the first year of the contract period which is the subject of negotiating or bargaining procedure. Nothing in this act shall be construed to require the appropriation of money for any purpose until such negotiation or bargaining has resulted in a written agreement.

SECTION IX: UNRESOLVED ISSUES SUBMITTED TO MEDIATION OR ARBITRATION

In the event that the negotiating or bargaining agent and the school board are unable within thirty (30) days from and including the date of their first meeting to reach an agreement on a contract, either of them may request mediation and conciliation upon any and all unresolved issues by the appropriate state agency or the department of education. If mediation and conciliation fail or are not requested, at any time after said thirty (30) days either party may request that any and all unresolved issues shall be submitted to arbitration by sending such request setting forth the issues to be arbitrated by certified mail, postage prepaid, to the other party.

SECTION X: ARBITRATION BOARD COMPOSITION

Within seven (7) days after arbitration has been requested as provided in Section IX of this act, the negotiating or bargaining agent and the school board each shall select and name one (1) arbitrator and shall immediately thereafter notify each other in writing of the name and address of the person so selected. The two (2) arbitrators so selected and named shall, within ten (10) days from and after their selection, agree upon and select and name a third arbitrator. If the arbitrators are unable to agree upon the selection of a third arbitrator, such third arbitrator shall be selected in accordance with the rules and procedure of the American Arbitration Association. If the negotiating or bargaining agent agrees with the school board to a different method of selecting arbitrators, or to a lesser or greater number of arbitrators, or to any particular arbitrator, or if they agree to have the state board of education designate the arbitrator or arbitrators to conduct the arbitration, such agreement shall govern the selection of arbitrators, provided, however, that if the state board of education shall be unwilling or shall fail to designate the arbitrator or arbitrators, an alternative method of selection shall be used. The third arbitrator, whether selected as a result of agreement between the two arbitrators previously selected, or selected under the rules of the American Arbitration Association, or by the state board of education, or by any other method, shall act as chairman. Whenever the word arbitrator is used in this act it shall be construed to mean arbitrator wherever applicable.

SECTION XI: ARBITRATION HEARINGS

The arbitrators shall call a hearing to be held within ten (10) days after appointment and shall give at least seven (7) days notice in writing to the negotiating or bargaining agent and the school board of the time and place of such hearing. The hearing shall be informal, and the rules of evidence shall not be binding. Any documentary evidence and other data deemed relevant by the arbitrators may be received in evidence. The arbitrators shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records, and other evidence relative or pertinent to the issues presented to them for determination. Both the negotiating or bargaining agent and the school board shall have the right to be represented by counsel of their own choosing. The hearing shall be concluded within ten (10) days and within ten (10) days thereafter the arbitrators shall make written findings and a written opinion upon the issues, a copy of which shall be mailed or otherwise delivered to the negotiating or bargaining agent and the school board. The decision of the arbitrators shall be made public and shall be binding upon the certified public school teachers and their representative and the school board on all matters not involving the expenditure of money. The decision of the arbitrators shall be final and no appeal shall be made therefrom except on the ground that the decision was procured by fraud or that it violates the law, in which case the appeal shall be to the (appropriate) court. The court shall limit its inquiry on appeal to the grounds for appeal recited in the foregoing sentence. Fees and necessary expenses of arbitration shall be borne equally by the negotiating or bargaining agent and the school board.

SECTION XII: RIGHT TO ASSOCIATION MEMBERSHIP; RIGHT TO REFUSE SAME

Certified public school teachers shall have the right to form, join, and otherwise participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Certified public school teachers also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the school boards.

SECTION XIII: REQUIREMENT FOR LEGISLATIVE ACTION EXCEPTED

Nothing in this act shall be construed to authorize the execution of written agreements by negotiating or bargaining agents, associations and labor organizations, or school boards which will commit the legislature in advance to the appropriation of money.

SECTION XIV: SEVERABILITY

If any provision of this act, or application thereof to any person or circumstance, is held unconstitutional or otherwise invalid, the remaining provisions of this chapter and the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

SECTION XV: SHORT TITLE

This act may be cited as the Public School Employees Negotiating and Bargaining Act.

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THE WORKER'S RIGHTS & THE PUBLIC WEAL

RELATIONS between management and organized labor in the private sector of the U.S. economy have been maturing for decades. Out of negotiation, intermittent conflict, legislation and court decision, there has emerged a generally workable system that breaks down on some spectacular occasions but in the main serves the cause of both sides as well as the public good. Not so in the crucially important and rapidly expanding public sector, which embraces everyone who works for government at any level—federal, state, county and municipal—and embodies every conceivable skill, from schoolteaching to garbage disposal. In that area, labor relations are in a primitive stage.

Some 12 million Americans, one-sixth of the national labor force, now work in the public service. In the next seven years, this figure is expected to reach 15 million. Until relatively recent years, the widely held public point of view was that these government employees—whatever their number and whatever their classification—had no right to organize, let alone a right to strike. In 1937, Franklin D. Roosevelt called public strikes "unthinkable and intolerable." United Auto Workers President Walter Reuther said in 1966 that "society cannot tolerate strikes that endanger the very survival of society," and proposed finding a new "mechanism by which workers in public service can secure their equity without the need of resorting to strike action." Half of the 50 states have laws prohibiting strikes by government employees, and in all of the others the mood is clearly against them. Yet, with increasing truculence, public employees are striking.

Last week the first statewide public-employee strike in the U.S. closed one-third of Florida's 1,800 public schools (*see* EDUCATION). The stench of January's illegal strike by New York City's sanitation men, which heaped 100,000 tons of garbage on the streets, offended the nation's nostrils—and was quickly followed by another strike of trash haulers in Memphis, Tenn. Detroit's summer epidemic of "blue flu," in which 700 policemen reported sick, deprived that city of 30% of its on-duty law-enforcement force. A 1967 walkout of firemen in Youngstown, Ohio, emptied all but one of 15 fire stations. In fact, Ohio, which has a tough law calling for the firing of every public employee who goes on strike, has had at least 30 strikes—involving police, nurses, city service employees, teachers and other government workers—in the past year.

There is every indication that the situation is growing progressively worse. The 142 work stoppages called by public employees in 1966 exceeded the total for the four previous years combined; informed estimates of the 1967 figure place it at upwards of 250. Dr. Sam M. Lambert, executive secretary of the National Education Association, which represents one million teachers and administrators, has predicted 250 strikes by teachers alone next year. Says Pennsylvania University Industry Professor George W. Taylor, principal source of New York State's public-employee labor law: "It's going to be a mess for generations."

Wrong-Way Laws

What is now painfully clear is that the antistrike laws do not work. In their new attitude, public employees are weighing the results of abiding by the law against those of defying it—and they are opting for defiance. "We are beyond abstract lessons in legality," says Albert Shanker, the onetime math instructor who led New York City teachers out of the classroom last September—and won a pay boost of 20%, largest in the city's history. "Perhaps it is a bad lesson to be learned, but the city has convinced us that striking brings us gains we cannot get any other way." Worse than not preventing walkouts, the punitive laws actually appear to be provoking them.

"Knowing that we would not strike," says William D. Buck, president of the International Association of Fire Fighters, "officials have taken advantage of us, almost daring us to strike."

In all its aspects, public labor law at the state and local level can only be described as chaotic. A few states, notably Wisconsin, Michigan and New York, recognize public unions and some form of collective bargaining. But some recognize neither, and a few have no public-employee laws at all. Ambiguity is common. Colorado lets public workers join unions but bars them from bargaining. In what can serve as a textbook example of legal sidestepping, Ohio does not recognize the existence of public-employee unions, prohibits these nonexistent unions from striking—and yet permits the public employer to deduct union dues from paychecks.

The federal picture is clearer, though not without some fog. Employees of the national Government still prefer to exert their power through the techniques they have used for years in applying political pressure to Congress. Thus the United Federation of Postal Clerks has lobbied a cumulative 36% wage increase for its 165,000 members since 1961—without once threatening a strike. There are, however, new factors at work on the federal level. In 1962, President Kennedy issued an enlightened executive order formally recognizing the Government worker's right to join a union—and the duty of federal agencies to bargain with unions in good faith. As an inevitable result, the pace of unionization took a dramatic spurt. Since 1961, the number of exclusive bargaining contracts signed by federal employees has risen from 26 to 600; the number of workers covered by such contracts has gone from 19,000 to more than a million.

While this suggests new areas of stress between the national Government and its employees, it is unlikely that there will soon be the kind of trouble that is now plaguing lesser government subdivisions. For one thing, all people starting to work for the Federal Government must sign a pledge not to strike, not to advocate strikes and not to join any association that does. For another, the majesty of the national Government and the office of the President continue to provide a far stronger deterrent than exists in state and local situations.

Essential Differences

One major factor in making government workers more and more restive is the obvious difference between the rewards in the private sector and those in the public. Government pay scales often run below those paid by private industry. In Detroit, for instance, the median private hourly wage was $2.04 in 1955—against $1.79 for government workers. By 1967, the gap had widened: $3.49 to $3.09. Not many employees any longer consider it a privilege to work for the government. The job security of civil service has lost considerable point in a boom economy, where the demand for labor outstrips the supply. The effect of all this is evident in one statistic. Although union membership nationally has increased only 15% since 1956, it has increased 60% in the field of government.

Once they are in a union, public employees immediately see further differences. Thus in Manhattan, drivers on the buses operated by the public Transit Authority are covered by the no-strike law, while those driving for the privately owned Avenue B and East Broadway Transit Co. are under no such restriction. Fired by the Washington Suburban Sanitation Commission after a 1966 strike, garbage men in suburban Washington savored the immense satisfaction of going back to work—at the higher wages they had demanded—for the private contractor to whom the commission had let the new refuse-collection contract. Amid such con-

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tradictions, organized public workers are increasingly taking the position that collective bargaining is meaningless without the ultimate weapon of the strike which, used or not, brings gains to private employees.

State and local laws have attempted the difficult task of defining the essential difference between the public and the private sector. Differences undeniably exist, and many of them describe the problem that is generating strikes. Governments are monopolies that do not operate in response to the profit motive and that, unlike private industry, cannot go out of business. Raising commodity prices to meet the rising costs of labor is certainly easier than raising taxes. In private industry, management and its power are readily identifiable. But this is more complicated in representative government, where both power and management develop from the citizen but are distributed down a lengthy chain of delegated command. All too often, public unions argue their case before officials who lack the authority—or the will—to negotiate solutions. Public employees are also aware that, while their opponent across the negotiation table supposedly represents the public weal, his bargaining stance is frequently determined by political expedience—and the sheer desire for political survival.

Search for Solutions

The most hopeful aspect about the rash of public strikes is that they have injected new and sorely needed urgency into the search for solutions. Investigation proceeds in a wide range. Some suggestions have been heard that existing strike penalties are not severe enough to deter strikes and should be increased. Advocates of this position refer to the example of John L. Lewis' 1946 coal miners' walkout, in which a $700,000 fine, imposed by the U.S. Government, effectively throttled the strike.

Labor Mediator Theodore Kheel proposes enjoining only those strikes that affect public health and safety; others, he feels, can be managed within the strategies of arbitration. Michigan State University Economist Jack Stieber would group government employees into three categories, only the first of which—possibly limited to policemen and firemen—would not be allowed to strike. Strikes instigated in less essential services would be tacitly tolerated, at least until their cumulative effect went beyond inconvenience.

The difficulty with such distinctions is that they are likely to work better on paper than in the field. A study committee headed by Pennsylvania's George Taylor has termed them "administratively impossible." Where do teachers fit, for example? Do strikes in the public schools imperil either the public health or safety? And where is the line drawn in the staffs of government hospitals? Are nurses more essential than, say, laboratory technicians? In any case, there are fluctuating degrees of essentiality that defy easy definition. New York City's transit strike turned intolerable within days. But this year, residents of Rochester endured the loss of their public transportation system for nine weeks.

Compulsory arbitration is now being suggested in some quarters as a last-ditch solution. Both management and labor are generally against it in the private sector, on the grounds that it undermines the collective-bargaining process. For the public sector, A.F.L.-C.I.O. President George Meany has suggested what he calls "voluntary arbitration" —the intercession of an informed and mutually acceptable third party to engineer a settlement. One difficulty here is the genuine doubt that representative government, which receives its mandate from the public, can legally bind itself to an outside judgment.

The University of Wisconsin's Nathan Feinsinger, who serves as a special labor consultant to Governor Warren P. Knowles, has proposed the principle of "voluntaryism," a term he borrowed from George Taylor. "In my judgment," says Feinsinger, "a voluntary agreement not to strike is much more apt to work than a system of fines or imprisonment. This is because a no-strike agreement is the product of negotiations and not imposed from above." Feinsinger would introduce what he calls a "neutral," appointed by both sides, who would audit negotiations as a detached and dispassionate observer, making nonbinding recommendations on request. In the event of a bargaining deadlock, the neutral could break it, again by common consent, with a "final and binding arbitration award." Adds Feinsinger: "Since this procedure would be the product of mutual agreement, there would be an incentive to make it work."

To make bargaining work and last, some experts favor bringing all unions that deal with a particular government into bargaining sessions simultaneously and as a group. The rationale is that this would tend to keep one union from trying to get a better deal than the last one, a labor tactic so familiar in private industry negotiation that it is known as "whipsawing." At the same time, say these experts, the other side of the table should include not only government administrators but also representatives of the legislative branch, which inevitably must appropriate the money that the settlement demands.

As all this indicates, worried experts and officials are coming forward, however tentatively, with proposals that merit study. U.S. Senator Jacob Javits of New York in 1966 introduced a bill that would meet a strike threat with a 30-day "freeze," during which, as tempers cooled, a presidential board of inquiry would examine the issues involved. George Taylor's committee favored a law obliging the proper officials—Governors, mayors—to seek a court injunction as soon as they saw a strike coming in an essential service, rather than waiting until the actual walkout.

Nearly all of the finespun theories are still in the laboratory, of course; none of them have been tested under fire. The only significant local government forum in the U.S. that is available to the disputants in public labor controversy is New York City's Office of Collective Bargaining, which opened this year and which the garbage men ignored. The non-acceptance of such a well-intentioned agency leads to the conclusion that solutions lie a long, troubled way ahead. "Public employees will strike unless there are acceptable alternatives," says Arnold Weber, professor of industrial relations at the University of Chicago. "I don't have any answers, and nobody else has any answers." In some quarters there is cautious hope. Says Victor Gotbaum, who heads the New York District 37 of the American Federation of State, County and Municipal Employees: "Both sides are just learning how to bargain, and must be given a natural chance to grow."

A Positive Approach

What is urgently needed is an entirely fresh approach to the problem. Until now, most government thinking and effort have been directed at prohibiting strikes and punishing the unions that violate the bans. Since it is now clear that this negative stance only makes matters worse, new efforts must be mounted on the positive side.

First, the right of the growing millions of public employees to organize and bargain collectively must be recognized. Second, urgent and continuing work should be undertaken to develop bargaining procedures and machinery aimed at preventing strikes, rather than banning them and punishing strikers. While situations will differ widely from one state and city to another, some forms of fact-finding, conciliation, mediation, arbitration and injunction to work in the public sector must be devised. Third, despite all the complications involved, it must be recognized that there are differences among various kinds of public service —that some are more essential than others. Certainly no strike of policemen, firemen or prison guards can be tolerated. But a strike of clerical workers in a state accounting office, for example, can be considered in an entirely different context.

Whatever new laws are enacted, the public will have to accept the principle that government employees should have a right to participate in the determination of their working conditions—in other words, to collective bargaining. And organized government workers, given the assurance that they will get a fair and full hearing, must be made to recognize that they have no right to jeopardize the public safety.